

**BAIL OR JAIL?
THE MAGISTRATES' DECISION**

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CONTENTS

Volume 2	PAGE
Chapter 8 Policy Initiatives Relating to Bail	331
Chapter 9 Operational Issues in the Remand Process	361
Chapter 10 Bail or Jail? The Decision Revisited	386
Appendices	418
References and Bibliography	513

CHAPTER 8

POLICY INITIATIVES RELATING TO BAIL

This chapter aims to assess the impact of recent changes to the law and policy on bail. The discussion will draw on both the participants' perceptions and the quantitative research findings.

Several recent changes in the law and policy relating to bail will be discussed to gauge their significance to, and impact on, the remand process. These are: the introduction of Bail Information Schemes (BIS, hereafter) which is part of the Government's initiative to reduce the prison remand population; the extension of bail hostel provisions which until recently was also part of the initiative to reduce the prison remand population; section 154 of the Criminal Justice Act 1988 which restricts the number of bail applications to two without fresh considerations and; Custody Time Limits. The discussions will also illustrate that inherent in recent law and policy initiatives relating to the remand process are the conflicting aims of crime control, due process and bureaucratic values.

BAIL INFORMATION SCHEMES

The lack of information provided during remand hearings was a major concern of the studies undertaken in the late 1960s and early 70s (see Chapter 7). To overcome this concern both Bottomley (1970) and King (1971a) advocated the introduction of a similar scheme to that of the Manhattan Bail Project in Britain as a way of increasing the information available during remand hearings and thus as an instrument of reducing the number of defendants remanded in custody¹. The premise for the Manhattan Bail Project was that if defendants were carefully screened those that could be safely released on bail could be identified². The experiment did result

... in a substantial increase in the number of persons granted bail and a decrease in the proportion of persons failing to answer their bail and committing offences on bail. (Home Office, 1974: para.131).

Despite evidence of its success in the United States, no official experimental scheme was set up in Britain. However, attempts were made to apply a points scheme similar to that used by the Manhattan Project, to the findings of a number of

research studies (Bottomley 1970, Davies 1971). Both attempts indicated that if the scheme were to be introduced in Britain a substantial number of defendants who were being remanded in custody would be eligible for release on bail³. The studies, therefore, suggested that there were defendants remanded in custody who could safely be granted bail. Furthermore, they also suggested that the appropriate criteria were being assessed, in the sense that the vast majority of defendants released on bail already fulfilled the criteria for recommendation for release under the scheme.

Nevertheless, there were some reservations concerning the applicability of the American scheme to Britain. These centred around the fact that under the British system of granting bail defendants could be remanded in custody for a number of reasons whereas in America only one consideration was legitimate - that of whether the defendant would answer their bail. Furthermore, it was argued that a points scheme would fetter the magistrates' discretion. Nonetheless, Zander (1967) argued that the points score method used by the Manhattan scheme had three main advantages: it standardised bail practices and would consequently reduce variations between courts; it ensured that the bail decision is made with at least basic information about the defendant and that it would in some cases save court time as the information can be concisely presented. In addition Bottomley (1970) argued that it had the advantage of making more information available and that this information would be independently verified.

Zander (1967), therefore, urged that the Manhattan scheme should be adapted for use in Britain. He, consequently, proposed a revised version of the points scheme which King (1971a) argued was considerably diluted. It involved the provision of written forms containing details of the defendant's record, community ties and the reasons for police objections to the magistrates for every defendant who was applying for bail. King (1971a) argued that Zander's proposal to use written information sheets may allow magistrates to exercise their discretion in a more rational manner but would not necessarily increase the number of defendants granted bail as what was important was whether the information was unfavourable or favourable to the granting of bail. In his opinion the best method of collecting this

information was the Manhattan scheme suitably adapted which would provide an objective assessment of a defendant's suitability for bail. Bottomley (1970) also argued for a similar scheme to that found in the States to be adopted in Britain. However, he argued that one of the central features of the scheme, the point scoring, would have to be dropped mainly because it was an untested and arbitrary way of predicting future behaviour but also because of the problems associated with the identification and measurement of factors to predict other considerations in the granting of bail not present in America.

The Working Party (1974) also rejected the introduction of a scheme based entirely on the Manhattan Bail Scheme. Instead, it proposed the introduction of a standard form very similar in nature to that proposed by Zander (1967) which would provide information to the court about the defendant's personal circumstances⁴.

The Genesis of the Present Bail Information Schemes

After the Working Party reported in 1974, the Vera Institute was invited to mount a British project similar to the bail schemes in America. This project was run in conjunction with the Inner London Probation Service and staffed by probation officers⁵. The aim of the scheme was to increase the information available about a defendant's community ties thus increasing the likelihood that a defendant would be diverted from custody. This resulted in targeting defendants who had been detained by the police and who were designated as being at risk of custody. Defendants were interviewed and information concerning the defendant's community ties was recorded and then verified by contacting friends and family either at court, by telephone or occasionally through personal visits. The information was then written on a bail information form which was supplied to the defence, the police and the court, in the hope that the information would influence the court to grant bail. Furthermore, the scheme also provided intensive social work for selected defendants on bail with practical and emotional problems. The Report (Inner London Probation and After Care Service, 1976) tentatively concluded that:

... the provision of information "seems to encourage more frequent granting of bail at first appearance" and emphasised the importance of bail support work, suggesting that further remands in custody could be avoided by "task centred social work and crisis support ... in conjunction with supervision as a condition of bail. (Lloyd, 1992:9).

Despite this promising conclusion, the agenda for any kind of national bail information form or scheme lay dormant until 1985 when the Association of Chief Officers of Probation (ACOP) in conjunction with the Vera Institute started an initiative which was funded by the Home Office.

The main impetus for the setting up of these schemes was the creation of the C.P.S. in 1986. ACOP argued that if independently verified information about defendants' community ties could be made available to the newly created C.P.S., they would be aided in their new role as independent decision makers as the information would counter-balance information from the police and as a consequence may be more likely to override police objections to bail and recommend that fewer defendants be remanded in custody. In other words, the explicit intention of the schemes was to reduce the number of defendants remanded in custody. In 1986, ACOP invited areas to participate and by 1987 eight schemes were in operation. The aim of these schemes was to provide the C.P.S. with verified, factual and favourable information about the defendant which was relevant to the issue of bail.

Unlike the previous experiment, the schemes simply provided information and were not involved with bail support. The process started when Bail Officers arrived at the police station and ascertained who was in custody. The defendants in custody were then interviewed to find out information about their community ties such as details of address, employment and whether the defendant had family and friends in the area. The information was then verified and recorded on a bail information form which was given to the C.P.S. and the defence although, in practice, the defence were often given a verbal report. A significant departure from the idea of the Manhattan Project was that the form was not given to the court which did not, therefore, ever directly see or hear the information that was collected although, both

the C.P.S. and the defence could pass information on to the court.

The schemes were deemed to be a success. They had provided information which had allowed the C.P.S. to make better informed decisions, thus increasing the number granted bail without increasing the failure rate of those on bail. As Stone (1988) concluded:

... in approximately 400 of the decisions to grant bail ... the information was probably crucial, allowing defendants to be bailed who would otherwise have been remanded in custody. (Lloyd, 1992:10)⁶.

A pilot was also undertaken of what have become known as "prison bail schemes." These schemes were run along similar lines as the court based schemes except that they were based in prison, therefore, providing verified information on defendants who had already been remanded in custody, for their subsequent appearances in court⁷. Mair (1988) concluded that during the pilot scheme at least some defendants had been granted bail who would otherwise have been kept in custody.

The apparent success of pilot schemes resulted in the extension of the schemes to the whole of the country. In 1988, the Home Office, the C.P.S., the police and ACOP agreed to introduce court based schemes throughout England and Wales and further prison based schemes were also set up. Two national groups were set up to oversee the development and operation of the schemes. Guidelines were drawn up to outline the basis on which approved schemes would operate. The immediate aim of the bail information schemes was to provide:

... the C.P.S. with the information that will aid them in their remand request to the court. Brief, factual details, usually consisting of a statement verifying that the defendant has a address s/he can stay at if given bail, are provided to the C.P.S. as well as defence solicitors who, it is hoped, take this information into account in making their recommendations and applications to the court. Ultimately, by affecting remand decisions, bail information schemes aim to reduce unnecessary remands in custody. (Lloyd, 1992:iii).

The information provided would be about the community ties of the defendant. Only positive information would be recorded on the form which would be given to the

C.P.S. and the defence solicitors. Consequently, as well as directly influencing the C.P.S. decision to object to bail, the information could be used by the defence during a bail application. By 1993, 179 court based schemes covering 35 of the 55 probation areas had been created and there were 31 prison based schemes in operation.

The effectiveness of BISs is usually measured by the number of defendants whom the C.P.S. were originally recommending should be remanded in custody but who after Bail Information forms had been completed decided that bail is appropriate. Nevertheless, it is difficult to measure the number of occasions when the C.P.S. do override the police objections to bail. Firstly, the fact that a defendant was detained in custody by the police is not an accurate measure of police opposition to bail. Many defendants are detained in police custody in order that the court can attach conditions to a defendants bail. Furthermore, in some cases the police object to bail but on the same form say that if the defendant were granted bail by the court they would like XYZ conditions to be attached. It is hardly surprising that the C.P.S. would assess these applications in a different light to fully argued case for a remand in custody.

Godson and Mitchell (1991) concluded that independent verified information has an impact on C.P.S. decision making. Their study found that where information was not provided, the C.P.S. rejected 27 per cent of police recommendations compared with 49 per cent where information was supplied. However, research suggests BIS's also have an effect on the success of defence application for bail. Godson and Mitchell (1991) found that in cases where the C.P.S. requested a custodial remand, the defence applied for bail in 62 per cent of cases. In 34 per cent of cases the magistrates granted bail accounting for nearly all of the cases where the magistrates overrode C.P.S. objections. Furthermore, where information was collected the defence were more likely to apply for bail (74 per cent compared to 52 per cent) and where information was provided the defence application was more likely to be successful (37 per cent bailed with information compared to only 31 per cent with no information).

A recent Home Office study (Lloyd 1992) also concluded that:

Bail Information succeeds in influencing remand decisions, and thereby diverting defendants away from custody. (Lloyd, 1992:iii).

However, it goes on to say that the three bail schemes studied were effective in different ways. The first scheme had little effect on the number of C.P.S. and defence applications for bail but did have an impact on the strength of the defence applications and therefore had a considerable effect on remand decisions. The second scheme directly influenced the C.P.S. requests. The third scheme had a significant impact on both the C.P.S. and the defence and was deemed to be "the most successful in terms of the proportion of interviewed defendants estimated to have received bail due to the presentation of bail information." (Lloyd, 1992, iii). This report highlights the impact that BISs can have on the chances of a successful bail application. The report also points out that homeless defendants in particular benefitted from the scheme especially when a hostel placement was found. Finally, the report addresses the perceived independence of the BISs. It found that the magistrates and the defence believed in its independence, whereas the C.P.S. and court clerks perceived it to be biased towards the defendant and the defence. This may result from the fact that only positive information is supplied by the BISs.

The Home Office study (Lloyd 1992) also concluded that the prison based schemes were effective at diverting defendants away from custody albeit on the second occasion. A further important contribution made by the schemes is cooperation between different agencies staff⁸. However, the schemes are not without their problems as a 1993 report by H.M. Inspectorate of Probation highlighted. The Report was critical of most of the six schemes in the study and suggested that the problems with the prison based schemes which had resulted in failed or failing schemes stemmed from resourcing issues that prison governors faced. As a consequence, bail schemes had not been prioritised and funded nor resourced adequately.

One of the major differences between the original schemes that were set up in America and the BISs in Britain is that the information supplied by the BISs is

supplied to the C.P.S. and not to the court. There is a continuing debate as to the most appropriate destination for the information. Jones and Goldkamp (1991) argued that in Britain the magistrates were not sufficiently involved in the development or use of bail information. The Home Office Report (Lloyd 1992) addresses this issue and found through interviewing various personnel that the possibility was greeted with a mixed response. Those that believed that the information should go to the magistrates argued that the information would be used more effectively in this way. However, several criticisms of this approach were put forward. Firstly, it was thought possible that magistrates may confuse bail information forms with pre-sentence reports and assume that the form presented probation recommendations for bail. However, it seems unlikely that this could not be overcome by the training and involvement of magistrates in the process of development. Secondly, it was noted that the magistrates would expect bail information forms at every hearing regardless of whether the defendant was at risk of custody. This being the case, if a form was not presented for a defendant the magistrates may automatically assume that there is nothing positive to be said and increase the likelihood that the defendant be remanded in custody. Nevertheless, the absence of a form may be because of other reasons such as a lack of time for it to be completed, the defendant may refuse his/her consent or the scheme may only produce forms for those it believes to have a realistic chance of bail.

Lloyd (1992) argues that it seems surprising that an experimental scheme has not been set up to study the impact of the information when it goes directly to the magistrates especially when there seems to be some concern about the objectivity of the information in its present form as it is either presented to the court by the defence or the prosecution. However, the findings of this study and of Godson and Mitchell (1991) seem to suggest that the information may have the most impact when given to the C.P.S. as they seem more willing to overturn the recommendations of the police, thus not applying for custody in the first place than the magistrates who invariably follow the C.P.S. request⁹. It is questionable whether the provision of independently verified information to magistrates would change their reliance on the C.P.S. remand request.

The information provided only relates to the defendant's community ties and does not attempt to assess or verify offending related information such as previous convictions. This is a consequence of the explicit objective of the schemes of avoiding unnecessary remands in custody. However, if the objective is to make remand decision making more rational there is a place for increasing offending related information even if this may result in an increase in the numbers remanded in custody. The report of H.M. Inspectorate of Probation raised the issue of what should occur if the Bail Information Scheme revealed negative information about the defendant. It gave no concrete suggestions apart from guidelines being made available. However, a Bail Information Officer interviewed by the Home Office thought "that enough negative information was provided by the police" (Lloyd, 1992, 27) but went on to state that s/he would provide negative information to the court if there was a serious risk to the public. However, the Home Office Report (Lloyd 1992) also suggested that if BISs were to pass on negative information to the C.P.S. this would increase the confidence of the C.P.S. in the scheme. It stated:

... where the probation service has information which the police and C.P.S. are unaware of, it can only do the scheme good to inform the court through the C.P.S.. ... interviews ... would seem to indicate that they may have quite an impact on the trust held in the bail information officer. (Lloyd, 1992:27).

Notwithstanding these views it is the role of the police to provide the necessary and relevant information on offending related factors.

The Findings of the Present Research

Only Court A had a BIS attached to the court. Although the other two courts saw the benefit of the schemes and had carried out feasibility studies, these had concluded that the throughput of defendants at the courts was not large enough to make a scheme viable. However, evidence from Court A suggests that it has been effective in diverting defendants away from custody.

Table 8.1 The Effect of Bail Information Schemes: Court A compared with Court X.

	Court A (%)	Court X (%)
Nos. of defendants	100	100
Nos. C.P.S. object to bail	26	26
Nos. C.P.S. object to bail after BIS intervention	19	26
Nos. remanded in custody	14	22
Nos. remanded in custody after second application	7	16

Source: Court A Bail Information scheme.

Table 8.1 shows the effect of the BIS in Court A. In both Courts A and X the C.P.S. were originally going to request a remand in custody in 26 per cent of cases. In Court A the actual number of applications after intervention dropped to 19 per cent. The difference illustrates the direct effect of the BIS which resulted in the C.P.S. not applying for a remand in custody. The final number of remands in custody in Court A was 14 per cent compared to 22 per cent in Court X. This possibility shows the indirect effect of Bail Information in strengthening the arguments put forward by the defence when applying for bail. The BIS in Court A is also involved with those remanded in custody by the courts and produces further information which contributed to halving of the final figure for remands in custody after second court appearances to 7 per cent. Despite these figures it was impossible to assess the impact of the BIS in observed court as the information is provided to the C.P.S. and not the court.

As a BIS only operated in one court it is not surprising that some respondents were unaware of the initiative and probably explains why 13 respondents did not answer the question relating to the role of such schemes in the remand process. Of the 42

respondents who did provide an answer, 24 concluded that the role of the BIS was to provide information to the magistrates, 8 seeing this as their sole role. Nineteen answers included providing information to the C.P.S.. Thirty seven answers (but only 34 respondents) related to the function of finding accommodation for defendants whether in a hostel (22 answers) or more generally (15 answers).

The respondents were also asked if they believed that BIS were useful. However, nearly half of the sample (25 of the 55 respondents) either failed to complete this question or said that they did not know the function of the scheme. This seems to suggest that a relatively large number of professionals involved in the remand process have little, if any, knowledge of the existence or objectives of the BISs. Nevertheless, 93 per cent (28 out of 30) of those that responded thought that BISs were useful. One reason for this was their independence. A solicitor said:

... they are an independent source whom the court will automatically trust ... [verified information] carries a certainty of holy scripture.
(05).

A further finding was that respondents perceived the BIS operating in Court A to be reducing the numbers remanded in custody as well as saving court time by decreasing the number of contested bail applications which supports the findings shown in table 8.1. A clerk in Court A commented that she had noticed that since the creation of the BIS the number of cases where the C.P.S. objected to bail had decreased especially where the defendant had no address. Moreover, a solicitor commented that the C.P.S. do change their minds because of information they received from the BIS. He added that it would not be the only factor but it helped with an assessment of the case. Furthermore, the Bail Information Officer indicated that the scheme had directly affected the number of cases where the C.P.S. applied for custody because "they [to] had tighten up their act" and made sure they had grounds for a remand in custody because they knew that the Bail Information Officer would be reviewing the case.

Despite these positive comments it seems that the scheme had a narrow role. The

majority of respondents (14) thought BISs provided useful assistance in finding accommodation for defendants while only 5 said they provided a useful source of verified information. This seems to suggest that BISs are seen by many participants as accommodation agencies rather than information agencies. As one clerk commented:

I think the way that we use [the BIS], it's only in relation to the defendant's address. (28).

A member of the C.P.S. stated,

It's useful for providing an address for somebody, but that's about all really. (20).

As discussed above the information collected is provided to the C.P.S. and not to the magistrates. Only 10 out of the 26 who answered the question believed that the information collected by the BIS would be more effectively utilised if it was given to the magistrates directly. This may be because of the perceived importance of the C.P.S. decision to object to bail already highlighted in this study. Nevertheless, it may be that the recipient of the information is irrelevant as long as the information reaches the court. Furthermore, if the C.P.S. refuses to change its opinion the information can be brought to the attention of the court by defence solicitors. However, it seems that this route to the court may be somewhat haphazard as three of the magistrates interviewed from Court A knew nothing about the existence of the BIS. This raises questions about the usefulness of the information collected when used by the defence solicitors in bail applications as it seems that they do not indicate to the court that it is independent verified information. This is especially significant in light of this study's findings about the perception of information provided by the defence (see Chapter 6).

Nonetheless, even in the courts without a BIS, the probation service were seen as a valuable source of information. One solicitor commented

Individual probation officers will be aware of the family background to a matter and can often assist, ... officers can be useful in giving you information necessary for a bail application ... we do rely, not heavily, but when possible, upon probation. (56).

Obviously, the probation service could only supply information about defendants who were current or past clients of the service which limits the role they can play. In this case they would often be asked about the defendant's compliance with past and current orders. Nevertheless, the probation service's major role was seen as providing information about hostel places.

Summary

The findings of this study suggest that BISs may well be effective in reducing the number of defendants remanded in custody which supports the findings of the Home Office study (Lloyd 1992). However, it is impossible to gauge what effect, if any, the BIS in Court A had in this study and whether or not it can account, in any respect, for the relatively low custody rate of that Court. It is possible that the low custody rate of Court A can be partly explained by the existence of the BIS although several factors point to this not being the case. Firstly, the Bail Information Officer stated in the interview that Court A had always had a low custody rate even prior to the creation of the BIS. A view supported by many of the participants. Secondly, the proportion of C.P.S. requests for remands in custody is the same for Courts A and B (as is the bail rate), where it would be expected to be significantly lower. This suggests that the Bail Information Scheme does not significantly affect the C.P.S. decision to object to bail (see Chapter 5). Finally, the participants perceived the scheme to have a very limited remit, one of finding accommodation, which would suggest that it only diverts a specific group of defendants from custody.

The BISs also has the aim, albeit secondary, of increasing the quantity and quality of information available to the court. However, respondents appeared to know very little about the role of the schemes and consistently commented upon their usefulness only in terms of finding the defendant accommodation. This suggests that they are used in limited circumstances which must affect their effectiveness as information providers.

Furthermore, the Bail Information initiative has focused on those defendants at risk of custody. Most schemes do not interview defendants for whom the C.P.S. are recommending the granting of conditional bail. Consequently, the findings of this study (see Chapter 7) suggest that defendants facing C.P.S. objections with a request for conditional bail do not have information on their community ties available to the court. Also due to the targeting of defendants by the BISs defendants who have no realistic chance of being granted bail are rarely interviewed and often have little if any information available about them.

Overall, the findings of this study suggest that there are still a high proportion of defendants for whom no or very little information is provided to the magistrates on which they can base their decisions. This may be especially problematic in cases where the C.P.S. are requesting that numerous and restrictive conditions are attached to bail. But it also means that the Bail Information staff have to second guess magistrates' decisions when prioritising cases to be interviewed. Therefore, although the BISs have been successful for a limited group of defendants their capacity for providing more information in all cases has to-date been limited. Furthermore, their role as information providers is further compromised by the requirement that they provide only favourable information about the defendant whereas unfavourable information is as important to reaching an accurate decision as to the bail risk the defendant poses. It seems then that the twin objectives of providing information and attempting to reduce the numbers of defendants remanded in custody are incompatible.

If the aim of BISs is to produce rational decisions that produce the "right" decisions in the largest possible number of cases, then information about defendants even when they are likely to be released on unconditional bail is vital. This is especially the case with the increasing awareness of the issue of offending on bail. If the magistrates are to avoid criticism of their decisions they must question the assumptions and decision making processes of the police. In other words, have all the relevant information available to them. Having said this, the cost effectiveness of any future initiatives must be born in mind.

The widespread use of information technology and other electronic apparatus could and should increase the amount of information available to the court on which it can make its remand decision. However, for the information to be effective it must focus on the important issues in the decision making process. It is these issues that have to be addressed. How the magistrates and the C.P.S. make their decisions is of crucial importance to collecting the right type of information.

BAIL HOSTELS

Another important initiative relating to the remand process and the attempt to increase the number of defendants granted bail has been the provision of bail hostels. A defendant can be remanded to a bail hostel as a condition of his/her bail. There has been a rapid expansion of the number of bail beds available since the early 1980s when they were identified as one of the major vehicles for reducing the number of defendants remanded in custody. In others words, bail hostels are primarily for use as an alternative to a remand in custody. However, the Government has now announced a cut back in bail hostel provision (Prison Reform Trust 1994). Hostels provide not only an address for the defendant but structured activities and a set of rules, which includes a curfew, with which a defendant must comply and his/her compliance can also be monitored. The supervision of defendants, in theory, reduces the likelihood that they will breach bail and is thus, an important part of hostels providing an alternative to custody.

During the present study the use of bail hostels seemed to be relatively limited. The court registers indicated that 45 defendants were placed in bail hostels as a condition of their bail. However, this relatively low usage may be explained by a lack of hostel accommodation in the immediate area. Only one of the probation services covered had a bail hostel attached to its area. The other two courts (B and C) did not have their own hostel but had access to other bail hostels including the one that served Court A. This seemed to affect the courts use of this provision as Court B and C only sent two defendants each to bail hostels, both non local, while Court A

sent a total of 41 defendants, 30 to the local hostel and 5 non locally (data was unavailable in 6 cases). This seems to suggest that if hostels are available locally then the magistrates are more inclined to use them and are less likely to do so if it involves the defendant residing in another area. Therefore, there seems to be a case for providing local bail hostel accommodation. One respondent also commented that there was no hostel provision at all in Wales for women.

Despite the fact that hostels are supposed to be primarily alternatives to custody they can be used for any defendant. When respondents were asked who was sent to bail hostels two categories predominated. Firstly, those that were of no fixed abode (37 respondents) and secondly, those defendants who needed to be kept out of the area or who could not return to their own address as a result of their alleged offences, which included charges involving domestic violence and incest (19 respondents). Five mentioned defendants with drug or alcohol problems. This list suggests that hostels are used mainly to provide an address for a defendant although some form of treatment could also be made available for those with specific problems.

Ninty eight per cent of respondents who gave an answer (44 out of 45 respondents) believed that bail hostels were being used as alternatives to custody. Nevertheless, the majority of respondents indicated that they were used for this purpose in a limited number of cases where defendants needed an address. In only three cases did respondents mention another group of defendants, those who needed supervision. Furthermore, respondents indicated that hostels were not being used in every case as an alternative to custody. Twenty one per cent of those who answered (47) believed that they were used as alternatives to custody in 50 per cent or less of cases. Only 28 per cent of respondents believed that hostels were used in over three quarters of cases as alternatives to custody. If these perceptions are accurate it seems that bail hostels are not being used for defendants who have committed serious offences or who have a bad bail record. Furthermore, if this is the reality there is a risk that net widening is occurring in the sense that some defendants are being sent to bail hostels not as alternatives to custody but because of another reason increasing the number of defendants subject to supervision. Furthermore, because hostels are

supposed to be alternatives to custody, on a subsequent appearance in court for an alleged breach of hostel rules or conditions or as a result of a further charge, the defendant is far more likely to be remanded in custody. As one probation officer said,

... everyone knows that bail hostels are full of some people who would have actually been given unconditional bail and actually end up being up tariffed, having more restrictions imposed on them by the bail hostel than would have otherwise been the case and a small number would have been remanded in custody, so you've got a mixture. (33).

The problem of bail hostels being used as an alternative to bail rather than to custody seems to have been recognised by participants. One potential method of effectively reducing the prison population may be to provide stricter regimes at the hostels to try and persuade magistrates of their effectiveness as alternatives to custody. Sixty two per cent of the 37 respondents who gave an answer believed that stricter regimes would result in the increased effectiveness of bail hostels as alternatives to custody. The reasons given for this were that it would increase the magistrates' confidence in the credibility of the hostels. However, three of the respondents who believed that it would make no difference thought this to be the case because they felt that magistrates knew nothing about the regimes of the hostels. One probation officer commented:

I would be willing to bet that if you took a survey of the 130 magistrates on the bench, no more than half would have any real knowledge of probation hostels and very few would know anything about the regimes. (34).

One magistrate when asked whether she remanded defendants to bail hostels did not know what they were. This point was backed up by the Warden of a bail hostel who said that although a magistrates' liaison committee existed, few magistrates came to visit the hostel.

However, a more positive finding was that the probation service was satisfied that it could find a hostel place for almost every defendant that needed one, that is if the defendant was prepared to go anywhere in the U.K.. The hostel attached to

probation area A was supposed to be a clearing house for hostel places throughout the U.K. although, one respondent commented that sometimes they were too busy to perform this task and it was left up to individual court duty officers. Probation officers also recognised that there was a problem placing some types of offenders in hostels. They mentioned defendants who had mental health, drug or alcohol problems or had a history of violence. They were also unlikely to take defendants who had caused problems in hostels in the past. It seems then that certain categories of defendants are excluded from the provision of hostel accommodation.

The majority of respondents stated that it was usually the defence solicitor who first mentioned the possibility of finding a hostel place. It was very rare for the magistrates to suggest that a defendant could be suitable for a hostel placement. However, once a hostel place has been found it was unlikely that the magistrates would not remand the defendant to that hostel. Nevertheless, several respondents believed that some defendants were unsuitable for hostel accommodation and alternative accommodation would be necessary, of which there was a limited supply.

Generally hostels were seen as an important and useful initiative. However, several respondents did voice concern about their capacity to prevent defendants breaching bail. A member of the C.P.S. commented about bail hostels

They provide an address for somebody to live at, with rules which are constantly being breached by offenders who have been brought back to court because they've breached the rules at the hostel. The types of offenders who are going there are frequently the types of offenders who should be in custody. (20).

A probation officer also mentioned a further disadvantage of hostels

[Defendants] congregate in one place, a group of offenders, who have little in common, will not be with one another that long and some of the management problems in terms of the commission of further offences you end up thinking is more to do with the unpredictable grouping of people than the likelihood of any one of them committing offences if they were in a different circumstance. (58).

Summary

Bail hostels were perceived by respondents to be an important initiative and contributed to reducing the prison remand population. However, respondents believed that their effectiveness in diverting defendants away from custody was limited to a specific group of defendants - those without an address. There was some evidence that respondents believed that stricter regimes at bail hostels may increase their use by the courts by improving their credibility.

THE EFFECT OF S.154 OF CRIMINAL JUSTICE ACT 1988

Under the Criminal Justice Act 1988 a defendant has the right to make two bail applications after which s/he must demonstrate that there has been a change in circumstances before a further bail application can be made. Respondents generally believed that limiting the number of bail applications as of right had made little difference to the practical operation of the remand process:

If the magistrates have remanded once, they will remand on each occasion. On very few occasions ... you may be able to change [the magistrates]. But generally I would say that no matter how many bail applications you had, once somebody is remanded, then they'll just follow a course. (Solicitor, 57).

Furthermore,

... it does save time. It saves us listening to the solicitors pouring out the same [information]. (Magistrate, 30).

A magistrate summed up his feelings concerning second and subsequent bail applications. He said that a previous remand decision would be overturned only if,

... there had been a genuine change, we felt it was right or the effects of the last remand in custody had been very disastrous at home for some particular reason ... But if there is not any genuine difference then I think it's almost like a practice direction to us you know, don't sit in judgement on your fellow magistrates, which is fair comment I think. (30).

Applications for fresh considerations were limited during the observations. In only fifteen cases was an application made for fresh considerations and in only nine of these (60 per cent) were they successful. Of these, five were granted conditional bail. This seems to support the general view of the respondents that it was difficult for an application for fresh consideration to be successful and result in the defendant being granted bail. However, one solicitor commented that even though he knew he was unlikely to be successful applying for fresh considerations he always applied because,

... it creates goodwill with your clients if they can see you going for it and getting stroppy with everyone or putting forward an argument then they are happy at the end of the day. (57).

Another solicitor commented that:

They [the magistrates] listen all the time ... they are very amenable to listening. I'm not saying they are amenable to granting that there is a change of circumstance every time you make it. (56).

Having said this, one solicitor stated,

I think providing it's a genuine ground - a genuine change in circumstances, the magistrates will give the defence the benefit of the doubt. (44).

Nonetheless, four respondents argued that there was great resistance by the court to hear fresh considerations. One solicitor said:

... if you go and ask for changes - for fresh considerations - my word - it's an uphill struggle to do it. (07).

Another solicitor stated:

... magistrates are particularly loathe to consider anything that's constituting fresh facts. (02)

Interestingly, all four of these respondents who held this view primarily worked in Court A which suggests that getting fresh considerations heard and accepted in that particular court was more difficult than in the other courts in the study.

The problem most generally stated was that the legislation provides no guidance as

to what constitutes fresh considerations. The only guidance is that it has to be something that has not been presented to the court previously. The respondents in the present study did, however, provide some insight into the kind of factors that the court may consider to be fresh considerations. These were a change in the personal circumstances of the defendant including the finding of an address or employment; new evidence relating to the alleged offence(s) or the withdrawal of charges; evidence that a surety was available; that the victim had moved out of the area; that the co-defendant had either been arrested or bailed; that the property from the offence had been recovered; or the delay in the case was excessive including applying for fresh considerations at the committal stage. However, respondents did state that the change in circumstances had to relate to the reasons why the defendant was remanded in custody. As one solicitor said,

... if the magistrates take the view that someone is going to commit an offence on bail then there is little point in you coming back to the court and saying my wife is just about to go into hospital, my girlfriend has just had another child, that's not likely to influence their decision about whether they are going to commit another offence on bail. (44).

A similar list was produced when respondents were asked what should constitute fresh considerations although some important differences were found. Firstly, ten respondents argued that anything new should constitute a change although there was one respondent who thought this to be already the case. Secondly, three respondents stated that nothing should be deemed to be fresh considerations. In other words, they believed that once a defendant had made his/her two bail applications and had been remanded in custody s/he should stay there until his/her trial.

Research carried out by Brink and Stone (1988) identified a further consequence of limiting the number of bail applications as of right. This was the delaying of bail applications to permit their better preparation. The findings of this study suggest that the practice of delaying bail applications still occurs but for different reasons. As one solicitor said,

"... when the Nottingham justices case came out everybody had to show a change in circumstances. It was better to tell your client wait until I can get further information to make that change in

circumstances, you are better off lying low, because you are effectively having two bites at the cherry for your bail application, but now the law provides, ... that the court must review on each occasion that a man comes back to court, which is tantamount to saying that there must be a change in circumstances but because the chap now has a bite effectively every time he comes before the court, I see no point in not making a bail application. (56).

Another solicitor commented:

... these days because there are two bail applications as of right before a change in circumstances is needed, there is little to lose in making one bail application right at the outset ... it's rare to decide that you shouldn't make a bail application. (44).

Having said this, several solicitors said their advice to their client on whether or not to make a bail application partly depended on the magistrates who were sitting. Several solicitors said that they often advised defendants to delay making a bail application because a certain bench of magistrates were sitting.

... I'll take one look at the bench and I'll know that we won't get bail, so I'll think of an excuse to adjourn it for a few days ... knowing full well that in a few days time I'll have a different bench who I'll be more likely to get bail with ... I'll say to my client, listen, if we make a bail application today you won't get bail, not only that you'll waste your bail application, because obviously you are limited to the number of bail applications you can make, not only that if you make another bail application in seven days time which you are entitled to do, the magistrates then are going to be pretty reluctant about overturning their colleagues decision ... unless there is some pretty good reason ... so let's do it this way ... I will be in a better position to address the magistrates ... so very often I will agree to a seven day remand or three days or something on the basis that on the next occasion I'll have a different bench. (46).

Therefore, it appears that solicitors do advise defendants not to make a bail application but this is more likely to be because the chances of getting bail are very slim rather than delaying making an application. As one solicitor said "I discourage them, if I think it's a hopeless case" (55). Another solicitor said that he may advise a defendant to withhold an application in a serious case which had aroused public sentiments to allow the dust to settle. Furthermore, in cases where the defendant had allegedly committed a serious offence on bail, especially if the evidence against

him/her was strong or where the defendant had repeated failed to answer his/her bail, the defence solicitors were likely to advise that no application should be made. However, all solicitors said that the defendant had the final say as to whether or not s/he applied for bail.

During the interviews it became apparent that an important consideration for defence solicitors in advising their clients on whether or not a bail application should be made was their credibility in the court. If they are obliged to make an application or "[go] through the motions" (Solicitor, 46) they said that they made this apparent to the court by such statements as,

'I am instructed to make this bail application', then the ones who are more observant will realise that you are doing it just to pacify the client. (57).

Another solicitor commented:

... there are various forms of shorthand that are occasionally used, almost as blatantly obvious as a nod or a wink, that one can introduce into a bail application. (02).

They do this because,

... you want the magistrates to realise that you are not an idiot and you do appreciate that the chances of this client getting bail are nil, and it's not you getting on your high horse trying to make the hearing last as long as possibly can for your own selfish means ... (46).

The solicitors stated that they did this for the good of their reputation and credibility.

I don't want the magistrates to think this guy comes along and makes an application come what may ... they may be a time in the future when I'm making a genuine application ... I don't want them to think "Oh this is [46], this is the one who makes a bail application for everybody come what may, Oh you know, we'll take this with a pinch of salt." I will gain a lot more respect from them and benefit more clients in the future ... if on the odd occasion I say well there is no bail application. (46).

Another solicitor commented:

... I don't want to be like the boy who cried wolf, I don't want to make bail applications a 100 times out of a 100 when only 30 of them have any real merit, because in the end the magistrates tar you with

the same brush, they look at the bloke who's making the application and say well here he goes again, it's the same old story, they can't differentiate, ... what's the strong and the weak, but one of the things that influences benches is how earnest the application is and who is making it. The other thing is that the more applications you make that are nonsensical, the less credibility you have. (45).

Summary

It therefore, seems that the consolidation and clarification of the law relating to limiting the number of bail applications under s.154 of the Criminal Justice Act 1988 has prevented the delaying of bail applications for fear of wasting them. However, defence solicitors do still advise clients to delay an application either because of the seriousness of the offence or because of the magistrates that are hearing the case. Furthermore, if a bail application is made by a defence solicitor who believes it to be a hopeless case s/he makes this clear to the court for fear of losing his/her credibility. Other respondents were aware of this practice and could identify the cases where it occurred. Consequently, this code enables defence solicitors to indicate to the court that it is their belief that certain defendants should not be granted bail.

CUSTODY TIME LIMITS

Custody time limits were introduced in an attempt to decrease the time that defendants spend in custody awaiting trial. On the whole respondents saw their introduction as an improvement to the system. This is summed up by a member of the C.P.S:

I think they represent a good influence in concentrating the attention of the agencies on the important custody cases. (21).

A solicitor commented:

They are a good safeguard and I believe the magistrates are reluctant

to extend them. (05).

Seven respondents said that their introduction had speeded up cases, lessening the time spent in custody. A further nine respondents said that it had speeded up the time the C.P.S. spent preparing files.

The major criticism of their introduction was that the limits were set within boundaries that by and large were already being met. This concern is in some ways borne out by the findings of this research. Only five applications for extensions to time limits were observed during the quantitative research, all of which were granted, two despite defence objections. Furthermore, 9 out of 41 respondents, who gave an opinion, said that custody time limits had had little, if any, effect. Two respondents commented that very few applications for extensions were made and this suggests that the time limits were being adhered to in a large majority of cases. For example, the Bail Information Officer stated:

... my impression is that it is very rare for someone to be bailed because the time limit has expired i.e. the C.P.S. never reach it. (23).

During the interviews all respondents stated that the majority of cases were committed or dealt with prior to the expiry of the time limit. The only exception that was frequently mentioned was complicated cases which involved the collection of a large amount of evidence particularly forensic evidence. As a clerk stated

[Custody time limits] ... encourage the prosecution to get on with the preparation of the file and consequently there are very few applications to extend the limit. In my experience an application has only been made when forensic evidence is awaited. (48).

In these cases an extension was usually granted by the magistrates without objection from the defence. Nevertheless, two respondents commented that they knew of defendants who had been released after the time limit had been reached.

It is possible that a further consequence of the introduction of custody time limits may be an increase in the time defendants who are granted bail spend awaiting trial. However, most respondents denied that this had occurred. Having said this,

respondents in Court A said that this had been a problem in the past due to a lack of available courtrooms so that custody cases had to take priority. However, this problem had disappeared when they had moved to new and larger premises. This suggests that in some other courts there is a possibility that custody time limits exist to the detriment of cases where the defendant is bailed.

Summary

The majority of respondents perceived custody time limits as providing an adequate safeguard against defendants being remanded in custody for long periods. However, the time limits were perceived as largely irrelevant as most cases were dealt with within the time available and even when they were not adhered to extensions were usually granted by the magistrates.

CONCLUDING COMMENTS

This chapter has discussed some of the more important initiatives affecting the remand process introduced since the early 1980s. Bail Information Schemes and the provision of bail hostel places were perceived by the Home Office as major ways to reduce the number of defendants remanded in custody thus decreasing the prison population. For this reason, Bail Information Schemes have concentrated on this issue and their effectiveness is measured by the number of defendants they divert from custody. A measure which their budget and perhaps even their survival depends upon. This focus has prevented the schemes from becoming providers of full and verified information whether favourable or unfavourable to the defendant which would permit the magistrates and/or the C.P.S. to make their decisions on the fullest possible information. This is especially important with the increasing awareness of the issue of offending on bail where information concerning alleged offences is as important to the remand decision. Perhaps, it is therefore time to look at shifting the emphasis of Bail Information Schemes towards providing full, verified

and objective information on both favourable and unfavourable facts about the defendant and move towards the model provided by the Manhattan Bail Scheme.

Bail hostels are supposed to be alternatives to custody thus reducing the prison remand population. However, their effectiveness appears to be limited by two issues. Firstly, they are used mainly for defendants who have no address for bail purposes and secondly, they are also used for those defendants who would otherwise be remanded on bail not custody. This process of 'net widening' may result in increasing the prison remand population as it has a 'kick back' effect meaning that defendants if breached are more likely to be remanded in custody and it also 'up-tariffed' the defendant on future occasions. Both of these issues may be a result of magistrates and other participants' lack of awareness of the purpose of bail hostels which could be improved by the distribution of information and training. Stricter regimes were favoured by some respondents however, this is likely to increase the number of defendants who breach their bail and may consequently affect the prison remand population.

The initiatives and issues discussed above reflect the conflicting aims of the remand process. Firstly, Bail Information Schemes partly reflect due process considerations as they are supposed to provide objective verified information to inform the magistrates' decision. However, they were also introduced for economic reasons, to reduce the prison remand population. The primacy of economic reasons can also be seen in the ability of the court to remand a defendant for 28 days without his/her consent which is clearly against the principles of due process provided by the Bail Act 1976. However, custody time limits were introduced as a due process initiative to reduce time awaiting trial but also to increase the efficiency of the process.

NOTES AND REFERENCES

1. The scheme had run successfully in the United States for three years as the Manhattan Bail Project and had then been taken over by the City of New York. Similar schemes were also set up in other States in the America. The Manhattan Bail Project was originally set up by the Vera Foundation of New York and started in 1961.
2. In the Manhattan scheme defendants who consented were interviewed and reports were prepared for the court. The report contained information, verified either by telephone or personnel visits, about the defendants' community ties (this included information under six main headings: prior record, family ties, employment, residence, time in the area and a discretionary category which included such things as pregnancy, old age and poor health) to which points were allocated. For example, under residence, a defendant scored 3 points if they had lived at their present address for twelve months or more, 2 if it was between six and twelve months and 1 if it was between four and six months. If the total number of points scored was five or more then a report was given to the judge with an endorsement that the community ties of the defendant indicated that s/he would appear when required. A score of under five resulted in a report marked 'for information only' going to the judge. The forms were in no way binding on the judge. For a fuller discussion of the Manhattan Bail Project see M. Zander (1967).
3. Bottomley (1970) found that of those remanded in custody over a third had a score of above five points, which under the points scheme would have resulted in a recommendation for release on bail. Davies (1971) found that 85 per cent of defendants who were detained in custody in his study were eligible for release under the scheme and furthermore, over half of these scored seven or above which classified them as not only good bail risks but very good bail risks. Conversely, both Bottomley (1970) and Davies (1971) found low numbers of defendants who were granted bail but who scored five points or over (7 per cent and 2 per cent respectively).
4. The form would provide relevant information about the personal relationships, residence and employment in a concise accessible form. As the form would only cover the defendant's community ties and not the defendant's offending behaviour, it was proposed that no remand recommendation would be made. Court staff would complete the form as they would be impartial. The Working Party proposed that the forms should be completed only in respect of defendants who were brought to court in custody for the first time. However, they recognised that some defendants would not consent and that there would be some cases where the granting of bail was so remote that to complete a form would be unnecessary. Furthermore, they argued that in most cases the information provided would not need to be verified as the American experience had shown that most information supplied by the defendant was reliable and even if it was not this

fact would come to light during the proceedings. They therefore concluded that verification would only be necessary in a very small number of cases.

5. This was even though the Working Party had advised that, albeit the probation service would be the most appropriate agency to run the scheme, this was impractical particularly in small provincial courts because of small and fluctuating numbers of remand cases.
6. Of the 1,367 cases where information was provided, 36 per cent were remanded in custody, 35 per cent were bailed who would have been bailed even if no information was available and 29 per cent were judged to have been bailed due to the provision of bail information.
7. The prison based scheme was set up as a joint venture between the Inner London Probation Service, the Vera Institute and the Home Office. The pilot was set up in Wormwood Scrubs prison. Two teams were involved, one inside the prison made up of ex-probation officers and one outside the prison staffed by probation personnel. Prisoners remanded in custody for the first time were interviewed in prison. Information about the defendants' community ties was collected as well as information relating to the reasons why they had been remanded in custody. These were recorded on a form which was sent to the team outside prison who proposed a bail package which was presented to the defence solicitor to present to the court at the next hearing.
8. To run a prison based scheme it is vital to have the cooperation of the governor of the prison who must supply accommodation and in most cases staff. It is argued that the involvement of prison officers in the schemes is desirable as it increases job satisfaction and their stake in the criminal justice process.
9. Godson and Mitchell (1991) found that the magistrates agreed with the C.P.S. request in 98 per cent of cases.

CHAPTER 9

OPERATIONAL ISSUES IN THE REMAND PROCESS

During the interviews, two issues dominated the discussions and were the focal concerns of many of the respondents and it is these issues that will be discussed in this chapter. Both concerned issues surrounding the administration of the law on bail - the quality of the magistrates' decisions and the issue of offending on bail. Their dominance in the discussions justifies a closer analysis of the respondents' remarks and although not unconnected because many of the comments relating to offending on bail reflected the perceived problems with the magistrates, they will be discussed separately here. Moreover, the recent high profile of the issue of offending on bail in the media and political debates also makes this an important area. In addition, the discussion will provide some insight into the potential effectiveness of the proposed provisions in the Criminal Justice and Public Order Bill 1993 (hereafter CJPO Bill).

Another commonly raised issue concerned problems with the use of conditional bail. This is not discussed in depth in the chapter as it is discussed elsewhere (Hucklesby, 1994, see appendix 14).

THE HUMAN FACTOR IN BAIL DECISION-MAKING: PEOPLE V PROCEDURES

During the interviews respondents consistently raised issues relating to the administration of the law on bail. The substantive law itself was relatively free of criticism from the respondents interviewed. However, its practical operation and especially the role of those who administer it, the magistrates, was heavily criticised and it is to this criticism that the discussion now turns.

The main criticism of the administration of the remand process was directed at the magistrates themselves, particularly the lay magistrates. The cause of many of the most fundamental problems identified in this study were seen as stemming from the magistrates' implementation of the law. Indeed, several instances were highlighted in Chapter 6 that suggested that other participants changed their working practices depending on the magistrates that were sitting. In other words, the vast majority of

respondents believed that the problems they perceived with the remand process arose because of the implementation and administration of the law by the magistrates not problems with the law itself. As a solicitor wrote,

On the whole the legislation is relatively straightforward but its interpretation differs widely in practice. (06).

Therefore, "you need to start to think of the quality of people administering [the law]." (Solicitor, 02).

Basically, some respondents stated that the law was not applied properly by lay magistrates. As a respondent said,

... I'm not sure whether the Act itself needs to be changed because I don't think it's being used properly ... and that's down to the practice of the magistrates. (34).

A member of the C.P.S. went further than this and said,

... it does appear that many magistrates do not fully understand the Bail Act. They don't understand the different aspects of the law and in consequence their application of the law ... leaves a lot to be desired in the interests of justice ... I think they make misinformed decisions ... magistrates on occasions quite clearly do not understand what is going on, they don't know the basic fundamentals ... (22)

The most common example stated by respondents of the magistrates not applying the law properly was that they were perceived as not remanding enough defendants in custody. This criticism mainly appeared to be related to the treatment of offenders who breached bail whether by committing further offences, breaching conditions or not appearing (the problem of offending on bail will be covered in more depth in the next section). However, the basic argument of the respondents was that although the law provides that defendants who breach bail can be remanded in custody in certain circumstances, the magistrates did not use their powers to do this. So, for example, it was argued that magistrates were consistently readmitting defendants to bail who have allegedly reoffended on bail or breached the conditions of their bail. One member of the C.P.S. commented:

... the magistrates will only remand in the most serious of cases, on the most strongest [sic] grounds and that's the problem that we have. (59).

However, some respondents sympathised with the magistrates' reluctance to remand in custody and emphasised the pressure put on them from the Government:

There's a lot of pressure put on courts at government level to keep the prison population down. (59).

A further claim was that their perceived inability to apply the law resulted in magistrates making decisions on subjective rather than legal criteria resulting in inconsistent decision making. Indeed, the majority of respondents believed that the magistrates' remand decisions were inconsistent both between courts (26 out of 34 who responded) and between benches in the same court (29 out of 47). As one member of the C.P.S. said,

... the law is there and if the system does break down ... it's because it's not properly applied ... because of inconsistencies with lay justices, personal preferences etc., the fact that different justices sit on different days, it means that there are inconsistencies ... the Bail Act is not consistently applied and certainly not consistently applied in the same way. (21).

As a solicitor commented:

... a lot of the questions you've asked there [on the questionnaire] ... are based on what [are considered to be] uniform magistrates, they are not uniform. You will get ... the idiots and you get serious thinkers, you get a combination of them and the terrible inconsistency is that it really depends which magistrates you are in front of and that doesn't just apply with which different division but it also applies within the division and what day of the week ... the reality is that at the far end of the scale is that it doesn't matter how strong you've got [a bail application] you can be defending John the Baptist and they won't let you out on bail because certain magistrates believe everything that is said by the C.P.S., other magistrates at the other end of the scale are sceptical of the C.P.S. ... (45).

A Bail Information Officer concurred,

... you haven't got a Bail Act, you've got as many Bail Acts as there are benches of magistrates ... the problem is not the Act, it's in its interpretation. (23).

Comments like "depends very much on the magistrates" (34) were common place. However, these comments usually related only to lay magistrates as stipendiaries were seen as far more consistent. A solicitor commented when asked about the consistency of lay magistrates decisions,

I think that's the six million dollar question to be honest with you because I think that on a general basis they are inconsistent, individual magistrates are consistent and individual benches are consistent but as a body they ... are inconsistent ... I will avoid making a bail application sometimes because I'll take one look at the bench and I know I won't get bail. (46).

However, a clerk went further than this and said,

... you've got different benches, the sitting of different magistrates ... various magistrates and various benches are inconsistent ... as to who may or may not get bail. (49).

A member of the C.P.S. remarked,

Different benches make different decisions. You have certain magistrates who I can say to myself on a Monday morning, I have a good bench here, I'll get my fair share of remands in custody. Other days you can go in and I can say I may as well forget it, everyone will get bail and I know the defence solicitors say the same thing because obviously they will try to ensure that their clients case is in a court where the magistrates are more lenient ... (22).

A defence solicitor concurred with this,

... certain magistrates are very slow to grant bail and some are open minded and they will listen. (07).

Another solicitor said,

... there are certain magistrates who you know are seldom likely to grant bail against an objection and it can be very disappointing if you feel you have a worthy application to make and then find that you have to make it to somebody who will virtually disregard it automatically ... it's just bad luck. (05).

As a probation officer said,

... there is a feeling around on certain days you hear solicitors say we should get this transferred to another court so yes, there is a difference between courts. (32).

However, this can also be a disadvantage,

... sometimes if there are a lot of overnights towards the end of the morning if one court finishes early, some of them will be transferred out ... One morning, the prosecutor we spoke to told us ... [he was] going for two [remands in custody] both of them were bailed, it was a lenient bench ... three went to another court ... none of those three they were originally going for custody on. They went to another prosecutor and a hard bench, the prosecutors went for custody on all three and got all three. (23).

One probation officer commented:

I think [inconsistency] is a bad thing in the sense that it's anarchic and nobody can understand. No defendant I would think can really safely go to court and say to his wife well, I'll get bail, see you later on. (34)

This small selection of quotations shows that perceived inconsistencies in magistrates' decisions affected the work of the other participants in the process. In Chapters 6 and 7 it was remarked that the magistrates sitting affected both the work of the C.P.S. and the defence solicitors. As one solicitor said when asked if he changed the information used in an application depending on which magistrates are sitting,

There may be a different emphasis ... there may be points that I would emphasize more strongly to one bench or another. (04).

Furthermore, it affected all the decisions made by the court not just the initial bail/custody decision. For example, of reoffending on bail, a solicitor said,

Takes a couple of offences ... again it would depend which magistrates they came in front, if they ... ended up with a few lenient magistrates then they would be out. If they went before [the stipendiary] they may be remanded. It really is a question of luck on that side of things. (57).

Nevertheless, even stipendiary magistrates who were seen as more consistent varied:

Depending on the bench you see. Some magistrates have different opinions. I know the stipendiary magistrate here, if some one commits an offence whilst on bail, is of the firm belief that they shouldn't have bail again and they should be remanded in custody. Lay magistrates vary, some of them say well, give them another chance ... others say well no. You don't get any great parity with it.

It depends on the bench who is sitting at the time ... [inconsistency] I mean it's all decisions they make ... all remand decisions ... there's not great consistency ... some tend to lean a certain way and are not prepared to remand someone in custody and the other sets of magistrates who are just well we lock him up now. (Clerk, 49).

The comments above also illustrate that magistrates, including the stipendiary magistrate, were perceived to have identifiable reputations as lenient or harsh in bail/custody decisions. The Bail Information Officer stated,

The same case can (and is) dealt with in different ways by different benches. This strongly suggests a leniency/harshness gradient as a basic factor in all magistrates. (23).

Although, for some respondents this was inextricably linked to inconsistency, this was not necessarily the case. Some respondents felt that the system was consistent but still identified that magistrates had different reputations. As one police officer said,

You can pick individual panels and you know for a fact they are going to be remanded or you know for a fact that they stand a good chance of getting bail, because of the panel of magistrates, but generally it's pretty uniform. (38).

Another example is that the stipendiary magistrate from Court C was perceived to remand more defendants in custody while making fairly consistent decisions. This illustrates a point made by a probation officer that consistency does not necessarily come from like minds but from procedures adopted to review consistency which would involve reviewing the decisions made as well as associated issues.

The consequence of different magistrates' reputations and the inconsistency of the decision making was respondents' frequent comments that the remand decision was based on luck and the remand process is a "lottery". As one Clerk said,

Pot luck. In only borderline situations. Where it's a clear cut situation where a defendant must be remanded in custody ... there's no problem there. You get some situations where you get good arguments for remanding in custody and remanding on bail, with those borderline situations it depends who is sitting. (49).

Therefore, this 'lottery' did not cover all hearings but affected those on the

borderline. Most respondents remarked that there were some cases where the question of bail never arose either because the defendant was going to be granted bail or remanded in custody. As one respondent said,

... I would say taking your 100 per cent, 30 per cent are going to be remanded in custody ... 30 per cent are probably going to be remanded on bail. It's the middle 40 per cent and I would say that is a total lottery. (45).

Several respondents said that there was little that could be done if lay benches were relied upon,

I think any system that relies on lay magistrates will always have the disadvantage of imbalance, idiosyncrasies ... different cultures in different courts. (25).

Nevertheless, some respondents did believe that more and better training of lay magistrates may improve the decisions that they made. However, the majority of respondents were in favour of bail applications being heard by stipendiary magistrates. One respondent who was uncritical of the magistrates' decisions in general said of the stipendiary,

... I think you would have a lot more consistent decisions about bail ... They are more predictable. (55).

Stipendiary magistrates were preferred because they were legally qualified, sat alone and were generally perceived to be more consistent and experienced and work more quickly and efficiently. A member of the C.P.S. who regularly worked with a stipendiary said,

I am happier working with a professional magistrates. The reaction of a lay bench is much more unpredictable ... some instances where the stipendiary is prepared to remand people in custody, my own view is that a lay bench would ... give the defendant bail and they are open to persuasion, considerable persuasion. (47).

A stipendiary magistrate can also have an effect on how a lay bench works as they,

... tend to follow the line of the stipendiary magistrate and the effect he has on the lay bench is quite marked. (59).

Nonetheless, several respondents said that stipendiary magistrates were more likely to remand defendants in custody and less likely to be swayed by the arguments of

the defence. As a clerk said, who also sat as a stipendiary,

If there were to be a stipendiary magistrate ... I think there would be a difference in outcome ... I think that's a naturally accepted result of one person sitting alone and a professional person sitting alone. (43).

He went on to say that he believed that the use of stipendiaries would probably result in more defendants being remanded in custody,

... I don't think there is much doubt that a stipendiary's decisions would probably be firmer towards remands in custody. Certainly, I think they would be more consistent, because you've only got one person dealing with them. (43).

Nevertheless, the clerk did add that this would depend on the individual stipendiary. The Bail Information Officer concurred with this "if a stipendiary magistrate was appointed ... I'm quite sure the [custody] rate would go up." (23). This was mentioned by several respondents as the primary reason for wishing that stipendiaries would hear remand cases. However, several respondents were aware that the cost of this measure may probably be prohibitive.

Having said this, not all the respondents were critical of the magistrates. On the whole those who worked in Court C were least critical of the magistrates' decisions. This had two stipendiary magistrates who regularly took the remand court and which, according to the findings of this study, had a higher custody rate than the other courts. Nevertheless, there was still criticism even in this court. A solicitor from Court C thought that the magistrates, both lay and stipendiary, were very fair but that there were individuals who were unfair. Furthermore, he indicated that he did not believe this to be the case in all of the local courts. One of the clerks from Court B was aware that inconsistencies existed between benches adding that this was inevitable within the present system. Furthermore, he argued that if consistency was taken to an extreme,

... you might as well do away with real people and programme decisions by computer. (43).

This discussion touches on the wider debate of whether consistency is a desirable

objective that should be strived for, not only in the remand process but in the criminal justice system as a whole. Although space does not allow for a full discussion of this issue, the main argument is that inconsistency may result in injustice to individuals and bring a system into disrepute whereas consistency means that similar cases are treated similarly and justice should prevail. However, consistency can have its own problems. It can result in a rigid set of rules which may result in a fettering of the magistrates' discretion to such an extent that they have no room for manoeuvre to take account of specific cases and circumstances which may itself result in injustice. Nevertheless, even if consistency may not be an important objective in itself, perceived inconsistency, such as the findings suggest exist within the remand process, can undermine confidence in the process.

EXPLAINING DISPARITIES BETWEEN DIFFERENT COURTS

Several of the issues that have already been discussed have highlighted differences in court practices and remand decisions between the courts in the study. For example, in the previous section it was apparent that respondents believed that the remand decisions made by the stipendiary magistrate in Court C were more consistent. These will be discussed further in this section and may also provide an explanation of some of the differences in the custody rates found between the three courts that make up the quantitative research.

Basically, respondents perceived that Court A had a low custody rate and was seen as a lenient court. As one solicitor said

... I think they are probably more lenient in [Court A] than they are in other places, I don't know why, whether it's that they've got less time to consider the matters ... (56).

Several respondents suggested that the custody rate of Court A was around 10 per cent which correlates with the findings of the quantitative research. As the Bail Information Officer said,

... [Court A] is a very unusual place in comparison with many other courts because overall the rates are very low, our figures suggest that it's the lowest in the whole of England and Wales ... we have rates as low as 10 per cent. (23).

A member of the C.P.S. commented:

I think [Court A] in particular boasts of their record of sending fewer people to custody than any other part of England or Wales and I think that is a silly thing to boast about because I think it brings the court into contempt and regular offenders know that they can get away with things before [Court A] magistrates. (22).

Nearly, all respondents said that there was a perceived problem in Court A because they were not remanding enough defendants in custody. As one member of the C.P.S said,

... they fail to apply the Bail Act with sufficient rigidity in [Court A] and this leads to people being on a scandalously high number of counts of bail. I can recall ... seeing persistent offenders on at least eleven or twelve bails in some cases ... this is of course a licence to commit further offences. (47).

The perceived leniency of Court A was constantly stressed by those who worked there. The main concern was directed at the problem of offending on bail where it was perceived that defendants were consistently rebailed. As the Bail Information Officer said,

... people who have, the famous bail bandits, not only done it once or twice ... when the prosecutor comes in they've got ... ten, fifteen, twenty files. (23).

A member of the C.P.S. stated,

... I spent two and a half years in [Court A]. The approach to bail there is completely different [from Court C]. All but the most serious offences attract bail. People are literally on 10 or 11 bails in some instances. A fact I might say which brings the criminal justice system into disrepute. (47).

There was further criticism that the magistrates in Court A were too lenient with offenders who do not appear. This included accepting excuses from solicitors for non-attendance so that warrants were rarely issued.

However, one clerk said:

... [it] may be that expectations ... are different here [Court A] and elsewhere, but generally speaking I would imagine that the bigger cities grant more bail proportionately than the smaller courts just because there's a different threshold of acceptance ... we tend to be more tolerant. (26).

This seems to suggest that an explanation of its perceived leniency is in the culture of the court and that Court A had a culture which was more lenient. Certainly, all the magistrates interviewed from Court A stated that they believed that their decisions were appropriate and there was not a problem of too many defendants being granted bail.

The decisions of Court B were generally seen as fair. Nevertheless, the majority of respondents who gave an opinion saw the court as fairly lenient. However, the level of criticism of this perceived leniency was far less than it was for Court A which is interesting because according to the findings of the quantitative research they have similar custody rates. Nevertheless, there was still criticism of the magistrates granting bail to persistent offenders, those that are likely to reoffend.

The findings of the quantitative research suggested that Court C had a much higher proportional custody rate than the other courts. Most respondents perceived this to be the case. A member of the C.P.S. said that this resulted in more applications for remands in custody being made by the C.P.S. in Court C than in the other courts. This comment was confirmed by the quantitative and qualitative findings (see Chapters 5 and 6) and if, indeed, this reflects the reality of the situation, then the C.P.S. perception of the magistrates as harsh or lenient affects the number of applications that they make which, when the finding that magistrates invariably follow the C.P.S. recommendation is taken into account, may affect the eventual outcome of the case.

The main comparison was made between Courts A and C where a stark contrast was apparent between the respondents' perceptions of Court A and Court C. Court A was perceived as having a low custody rate and Court C a high custody rate. As a

member of the C.P.S. said,

... the basic point to make is that it's much more difficult to obtain bail in [Court C] than it would be in [Court A]. (47).

Some respondents perceived the practices of Court A to be a problem because they felt that too many defendants were being granted bail while others felt that the practices in Court C were too harsh and too many defendants were remanded in custody. Having said this, respondents seemed to be less concerned with the practices of Court C than of Court A. As discussed above, nearly all the respondents who worked in Court A commented on the perceived liberal attitude of the magistrates towards those who breach bail whether by reoffending, breaching conditions or not appearing. In these situations it was thought that defendants were routinely rebailed. Even defendants charged with serious offences with a high likelihood of repetition were perceived to be granted bail. In contrast, there was far less criticism of the remand decisions made in Court C. The majority of remand decisions in Court C were taken by two stipendiaries and were thought to be relatively fair. As one solicitor said,

I don't think they're bad and I think that they're more often right than wrong. (55).

A member of the C.P.S. from Court C said,

I would say that [the Bail Act] works properly in [Court C] in the majority of the cases. (47)

These comments were almost always linked to the fact that it was stipendiary magistrates who usually heard remand applications.

The contrast [between Courts A and C] ... may have something to do with the calibre of the magistrates in [Court C] because they are ... stipendiaries usually. (47).

In general, the decisions were seen as more just because the stipendiary was legally qualified and was less likely to be swayed by the defence. Repeatedly, respondents said that stipendiaries remanded more defendants in custody than lay magistrates and this may explain the differences between the court's custody rates. As a member of the C.P.S. said,

... [the stipendiary's] approach I would say is the right approach ... from my experience in [Court A] they've got it completely wrong ... they let far too many people out on bail for far too many serious offences. (47).

Nevertheless, a solicitor was critical of one of the stipendiaries in Court C (incidentally, the one to whom the quantitative findings relate)

The stipendiary tends to be harsh ... ***** tends to, if somebody has been remanded, they will be remanded on every occasion, he doesn't consider bail and sometimes that can work quite harshly ... on the remands he very harsh but that's talking about a specific person rather than generally. (57).

This was not the only criticism of this particular stipendiary. The Bail Information Officer from Court A saw him as a 'maverick'. This highlights the fact that stipendiary magistrates can be harsh and also that a system that relies upon them may be open to the whim of individual personalities.

There was also some evidence that the courts in the study were different from other courts in the area. Several references were made to other local courts who were usually but not always seen as making more appropriate decisions which usually meant remanding more defendants in custody.

Summary

The administration of the law on bail seems to be, as far as the respondents interviewed are concerned, the major problem with the remand process. The responsibility for these problems was placed firmly with the lay magistrates who were perceived as not applying the law properly which resulted in inappropriate and inconsistent decisions. Major differences were found in the quantitative research in the bail rates for the three courts and this too seems to be explained by one factor, the difference between decisions made by lay and stipendiary magistrates. Respondents argued that stipendiaries were better equipped to apply the law which they did, on the whole, more consistently. Furthermore, stipendiary were seen as

taking a harsher line which resulted in more defendants being remanded in custody. For most respondents, a better decision was made by stipendiary magistrates, at least the one who sat in Court C.

OFFENDING WHILST ON BAIL

If the quantity and frequency of references to offending on bail reflects its importance then it is one of two predominant issues of the qualitative research. It is for this reason that it will be discussed in more detail below. Respondents' perceptions of its incidence and associated problems will be addressed. Furthermore, respondents' ideas about possible solutions to the problem will be discussed. This is especially significant as the problem of offending on bail has, in recent years, been the driving force behind significant changes to the law on bail which is exemplified by the provisions in the Criminal Justice and Public Order Bill 1993.

The Problem of Offending on Bail

The respondents had very different perceptions of the incidence of offending on bail in the local area. Three respondents thought the incidence to be under 25 per cent of defendants granted bail while 11 thought the incidence to be between 25 and 49 per cent. Nine respondents thought the incidence to be between 50 and 74 per cent while 7 put the figure at above 75 per cent. A further 12 respondents were unable to put a precise estimate with 3 answering a small proportion and nine stating a large proportion. Having said this, 47 respondents believed offending on bail to be a problem.

The interviews provided some evidence that the problem was perceived to be greater in the area of Court A. However, this does not necessarily mean that the actual offending rate was any greater. In fact, evidence from the previous section suggests

that the explanation may be more to do with the court's handling of defendants who have allegedly offended on bail, in other words, that defendants are not remanded in custody when they have allegedly offended on bail. Indeed, the Bail Information Officer from Court A commented:

... the bails they are on, quite often the magistrates in [Court A], they build up a catalogue, they've got ten files coming to court, this guy's been given bail and bail and has reoffended. (23).

A member of the C.P.S. remarked,

... I think that is where [Court A] falls down. People know that they can continue to get away with it. (22).

The primacy of the issue of offending on bail in this study is not surprising as the interviews were conducted during the summer of 1992 when political and media attention was focused on a concerted police campaign suggesting that offending on bail was a major law and order problem and new measures should be introduced to combat the problem (see Chapter 1). The process of negotiation and debate surrounding this issue at the time of the interviews may have affected the participants' perception of the problem of offending on bail. At the same time as the police campaign, media attention was focused on several individual cases where defendants granted bail allegedly committed further serious offences. However, the majority of respondents remarked that despite the publicity surrounding offending on bail, they had not noticed any changes in the remand decisions made in the courts. Nevertheless, this does not necessarily mean that the decisions had not been affected and several respondents said that it was increasingly important. As one solicitor put it,

... there is an underlying ground swell of opinion against granting bail to those who persistently offend while on bail. (03)

The research carried out by the police had particularly focused on the problem of offending on bail by juveniles and young adults. These findings were borne out by the perceptions of some respondents. One solicitor commented:

... most of the ones who offend in my experience recently have been probably kids of fourteen and fifteen, perhaps even sixteen years of age. Adults don't tend to reoffend. (56).

A probation officer concurred,

I think there is a problem with adults, but I think it's far less of a problem with adults than it is with young offenders ... I think there is just a small handful [of adults] that are retained in custody for reoffending ... but it's not atypical for persistent young offenders to appear before the juvenile court week after week after week for further offences and all that can be done is to rebail them or put them into the care of the local authority which often means they just go home. (32).

Although the concern of this study is not with juveniles it is worth noting that the majority of respondents perceived the problem to be that the courts were powerless to tackle this particular problem because of restrictions on their ability to remand juveniles to secure accommodation partly because of the lack of available units.

However, the perceived problem that defendants who had allegedly reoffended on bail were readmitted to bail was not confined to juveniles. There was a general feeling amongst the respondents that defendants who allegedly committed offences on bail were generally rebailed. Nevertheless, most respondents believed that after several offences had allegedly been committed on bail by the defendant they would be remanded in custody.

Takes a couple of offences, but sooner or later they will get caught up with, and again it would depend which magistrates they came in front of, so if they were taken to a special court and they ended up with a few of the lenient magistrates then they would be out, if they went before say [the stipendiary magistrate] they may be remanded. (57).

Although most respondents thought that eventually the defendants would be remanded in custody, there was some evidence that other factors were taken into consideration when making a decision. In other words, alleged offending on bail was not perceived to result in an automatic remand in custody, even when it allegedly occurred on more than one occasion, but depended upon other considerations. It was generally believed that the most important consideration of the court when deciding whether or not a defendant should be readmitted to bail was the seriousness of the alleged offences. This practice is upheld in an article purporting to provide guidelines for magistrates remand decisions (Davies, 1994). Other important

considerations mentioned included the circumstances of the alleged offences, whether the offences were of a similar nature, the length of time a defendant had been on bail and previous bail history. Nevertheless, as in the quotation above, many participants remarked that the course of action taken would depend on the bench of magistrates that was sitting.

Future Developments

Various proposals have been put forward to tackle the problem of offending on bail and in the light of recent developments, mainly enshrined in the CJPO Bill 1993, the respondents comments on proposed reforms will be discussed. During the discussion it is important to note that for any reforms to be successful in reducing the incidence of offending on bail the alleged offender has to be caught, arrested, taken to court and in some cases found guilty of the offences in question.

One of the measures announced by the Home Secretary in 1992 was a proposal to make offending on bail an aggravating factor in determining sentence. This was later enshrined in s.29(2) of the Criminal Justice Act 1991 by the Criminal Justice Act 1993. However, the majority of respondents (56 per cent) thought that this would make no difference to the incidence of offending on bail. Only 26 per cent thought that it would lead to a small decrease in offending on bail and 8 per cent to a large decrease. The reasons given for the responses that this would make no difference are enlightening as they suggest that the Government were misled into believing that this would have a dramatic effect on the incidence of offending on bail. Five respondents believed that this measure would have no deterrent effect, 2 believed that it was already taken into consideration, and 5 thought that magistrates were not enforcing their present powers and, therefore, would not enforce the new measures. However, there is a counter argument which suggests that this provision may have some effect as it may make the finding of substantial grounds for rebutting bail easier as a result of the offence being perceived as more serious and therefore more likely to attract a harsher sentence. A consideration which can be taken into account especially

relating to the risk that a defendant may abscond. However, the findings of this study have suggested that the probable future sentence, if convicted, has little impact on the remand decision. Recent events seem to confirm the arguments against the wide spread impact of this measure as further legislation has since been proposed to combat the problem (CJPO Bill 1993).

Respondents were asked for their opinion on possible measures to combat the problem of offending on bail. In light of the fact that the Government has since introduced new proposals on this matter, the comments of respondents may give some insight into the potential success of the proposed measures. Twelve suggested that those who allegedly offended on bail should be automatically remanded in custody. One reason given for this view was if the defendant was not remanded in custody,

... it makes a farce of the entire bail system ... if you are on bail and you commit an offence ... they put you on bail again. I believe that bail should be shown to be, the serious thing that bail is, and if a man who is already on bail commits an offence in my opinion the court should have no other option other than to remand immediately, I think it's a decision that should be mandatory. (51).

A member of the C.P.S. commented:

[The case of Ellis] said in a situation where a man commits an offence and is put on bail, he can't really make his predicament or situation any worse, so it's an implied licence if you like to go on committing offences, knowing at the end of the day that it's all going to be rolled up and so composite sentences is [sic] ultimately going to be the method of disposal ... it's the very reason that the Bail Act makes provision for remanding people in custody on the grounds they will commit further offences, it's ultimately the protection of the public. (47).

Furthermore, a magistrate said that he believed that this should be the case because,

... if somebody reoffends whilst on bail obviously they don't regard bail as very important in their reckoning. (30).

However, as one police officer said of automatic remands in custody for offending on bail,

I don't know if the system could take it ... I don't think it's feasible

... automatic remands may be the answer but I don't know where you're going to put them all. (52)

This was seen as a particular problem because of the use of police cells at the time of the study. Another respondent pointed out that if automatic remands in custody were introduced this may result in more arrests and charges as the police may perceive it as a way of getting offenders off the streets.

This proposal has found partial acceptance in the CJPO Bill (1993) which proposes that defendants charged with certain serious offences, namely, murder, attempted murder, manslaughter, rape or attempted rape, who have been charged (or convicted) of any such offence including culpable homicide cannot be granted bail (clause 20). This proposal is mainly a reaction to a small number of cases where defendants on bail (or previously convicted) of a serious offence have allegedly reoffended whilst awaiting trial. However, although probably affecting only a small number of defendants it is the first measure since the introduction of the Bail Act 1976 to explicitly overturn the presumption of bail and, furthermore, leave magistrates no discretion to grant bail. It is for these reasons that it is of primary importance and a fuller discussion of its implications can be found in the final chapter.

Although a relatively small number of respondents believed the solution to be an automatic remand in custody, the majority of respondents did state that if a defendant had allegedly committed an offence whilst on bail the presumption of bail should be overturned and that they should have to convince the court that they could safely be granted bail. This would permit the continued discretion of the magistrates so that factors that are presently taken into consideration would continue to inform the magistrates' decisions. These would be such things as the nature and seriousness of the offence. As a clerk said

... bail is a right, but for the community at large, it's a risk and if that person reoffends then there should be some switching mechanism so that the risk is no longer borne by the community, the risk of the consequence ... becomes a burden on the defendant, everyone should have a chance but once they've made a mess of it that should be the

end of it. (26).

This also seems to be the preferred option of the Government who have proposed in the CJPO Bill 1993 that if an indictable or triable either way offence is allegedly committed on bail then the defendant need not be granted bail (clause 21) thus overturning the presumption of bail.

Six respondents wished to see the introduction of an offence of committing a further offence while on bail. One reason for this sentiment is that there is,

... nothing to lose ... because we are in a ridiculous state of affairs whereby a person gets the same sentence for stealing one car as he does for stealing 20 cars ... there's no deterrent ... if they know that they are on bail ... for stealing a number of cars ... they are not going to get much more of a sentence if they steal another ten. (Police Officer, 51).

As a member of the C.P.S. remarked,

... an offence of offending whilst on bail ... it may dissuade a lot of persistent offenders if they know that a conviction for offending on bail could carry an additional sentence. (22).

The Government seems, for the time being at least, to have dismissed this proposal. Several problems have in fact been identified with this approach, not least, the consequence that offenders would be sentenced twice, once for the original offence and again because they were on bail when they committed it, for the same offence or set of offences (see Hucklesby, 1992).

A slightly less radical proposal was that it should simply be reflected in the sentence for that offence (2 respondents) whereas one magistrate believed that it should affect the date for early release of the defendant, therefore, resulting in an offender spending more time in custody. However, this presupposes that offenders found guilty of offences committed on bail would be sentenced to imprisonment. Even the fact that weight should be given to the fact that an offence was committed whilst on bail raises issues about the hierarchy of community sentences in terms of harshness and the length of time or monetary amount that should be added to the sentence.

There are, at present, no sentencing guidelines relating to this situation and there are unlikely to be any in the near future as many of the judiciary believe sentencing guidelines to be attacking their independence.

Five respondents believed that the incidence of offending on bail was increased by the length of time that defendants spent awaiting trial and thus by speeding up of the court process the incidence would decrease. As one solicitor commented,

... most clients are regulars ... repeat clients ... if you keep anybody like that on bail long enough, they're are going to commit an offence on bail. If you deal with them within a week of charge, then they're not on bail when they commit their next offence ... a proportion of them will, yes, I tell magistrates this, if you keep people on bail long enough, their second offence is bound to be committed whilst they are on bail. (55).

This raises the question about whether it is now appropriate to introduce bail time limits which would work in a similar way to custody time limits (see Chapter 2) with the penalty for non-compliance being the dismissal of the case against the defendant.

A further three respondents felt that increasing bail support would decrease the incidence of the commission of offences on bail. Bail support provides supervision for defendants on bail and is intended not only to provide additional safeguards to the court to allay any bail risk but also to begin work with the defendant in an attempt to reduce the risk of reoffending in future. Unfortunately, although schemes exist, no systematic monitoring or evaluation of their work has yet been undertaken.

Nevertheless, many respondents were cynical about the effectiveness of any strategy designed to reduce the incidence of offending on bail. This was partly due to the age of many of the people involved, many of whom were juveniles. Furthermore, respondents believed that a small group of persistent offenders, what have become known as the 'hard core', were to blame for a large proportion of crime committed and were the main culprits for offending whilst on bail. These are the defendants labelled by the police as 'Bail Bandits'. As a member of the C.P.S. commented:

... the majority of offences committed whilst on bail are committed by a small minority of frequent repetitive offenders. (22).

Respondents generally believed that the minority of defendants who were not persistent offenders, who had committed only one or two offences, abided by their bail. However, it was the hard core of persistent offenders who were identified as the problem:

A small percentage of offenders are responsible for committing a large percentage of offences and whilst on bail e.g "joyriders". It is not uncommon for an offender to be rearrested for further offences whilst on bail, sometimes on as many as 12 or more occasions. (22).

These defendants were thought to have little respect for the criminal justice system or the sanctions it can impose, seeing sentences imposed as occupational hazards. One magistrate commented:

... some of them [defendants] don't really consider that the Bail Act, they consider it doesn't apply to them, it doesn't matter, they're gamblers, they are prepared to take a chance ... there is a subculture ... it's toothless to some of them. (29).

Furthermore,

... They believe they cannot make matters worse for themselves by committing offences on bail. In some respects they are right: the more offences you commit the more likely you are to receive an 'omnibus' sentence like probation or community service order which will not really reflect the gravity or frequency of the offending. (47).

If this is indeed the case then respondents believed that any changes to the existing system would not have any effect. Having said this, the respondents did think that if a defendant was remanded in custody after s/he allegedly committed a further offence, at least s/he would be incarcerated for a short period of time and, therefore, unable to commit further offences.

It is the non-persistent defendants, the first timers and the occasionally offenders, for whom some reservations were expressed concerning blanket proposals for all those who commit offences whilst on bail. Several respondents expressed concern that any proposals to tighten up the law or even the implementation of the existing law would cause a rigid system to be imposed which would result in these relatively harmless defendants being remanded in custody. It may also result in defendants

being remanded in custody for minor offences simply because they were committed on bail. One solicitor said:

[A defendant] is in the police station, and they charge him with perhaps 4 or 5 serious offences, the police are quite happy to grant that person bail in many situations, and yet, if somebody is on bail for quite a minor matter and commits another offence whilst on bail, also perhaps a minor offence, ... the difficulty of getting further bail is out of proportion to the reality of the situation, merely because it's an offence on bail. The totality of the situation gets lost and it becomes the formula. "You know, well, you were granted bail and now you've committed another offence whilst on bail, you're not going to get it". (55).

And it continues in the court,

... very often you'll find they're remanded in custody, then you get somebody with 2 or 3 comparatively minor offences being remanded in custody, whereas someone with perhaps ... 6 or 7 serious offences, and yet everybody's quite happy to see them being bailed... the fact that another offence has been committed on bail is given too great a weight. The magistrates aren't prepared to look at the totality of the thing. (55).

Although the present proposals to overturn the presumption of bail when an offence has allegedly been committed on bail make a distinction between summary only offences and indictable/triable either way offences this distinction does not allay the fears of some respondents that defendants charged with relatively minor offences will be remanded in custody as many offences falling into the more serious category can still be of a minor nature, for example, theft of a small sum of money or shoplifting. In fact, the vast majority of offences fall within the parameters of the proposal. Moreover, as discussed in relation to s.153 of the Criminal Justice Act 1988, this provision changes the starting point of any decisions to a presumption of custody. Evidence from this study suggests that once magistrates have decided to remand a person in custody it is very unlikely that they will change their position especially in the light of their views on the information that the defence provide (see Chapter 6). As a consequence, it seems that this provision will inevitably result in more defendants being remanded in custody when they have allegedly committed an offence on bail irrespective of the seriousness of the charges.

CONCLUDING COMMENTS

Many respondents felt that the law on bail was being inappropriately administered. As a result, they believed that many defendants were being granted bail when they should have been remanded in custody. The blame for this situation was firmly placed with the magistrates.

The increasing awareness of the incidence of offending on bail starkly illustrates the importance of crime control considerations to the remand process and its participants. A large majority of respondents believed that something needed to be done about the problem of offending on bail and even defence solicitors stated the importance of preventing some, but not all, defendants from reoffending by remanding more defendants in custody. However, due process views were also illustrated often by the same participants who did not believe that blanket proposals for all those who allegedly reoffend on bail were appropriate.

Some of these issues will be returned to in the final concluding chapter.

CHAPTER 10

BAIL OR JAIL: THE DECISION REVISITED

This thesis has aimed to provide an understanding of the processes involved in the remand decision. This chapter will draw out the main findings and attempt to provide a theoretical understanding of the remand process.

THE FACTORS IDENTIFIED AS INFLUENCING THE REMAND DECISION

An important finding of the research has been that many of the remand decisions are, in effect, not taken by the magistrates, the defendant's remand status having already been determined prior to the court hearing. The research has suggested that when the C.P.S. is satisfied that a defendant can be granted bail the magistrates rarely disagree with the decision. Furthermore, in cases where the C.P.S. requests that a defendant be remanded in custody but where the defendant does not apply for bail, the magistrates almost always agree with the C.P.S. request. In other words, the court rarely questions the basis for the C.P.S. objections. This, therefore, suggests that in only a limited number of cases, namely those where the C.P.S. request a remand in custody and the defendant makes a bail application, do the magistrates actually make the remand decision. Even in these cases the magistrates usually agree with the remand request of the C.P.S.. As a consequence, the opinion of the C.P.S. seems to be vital to any remand decision. Furthermore, it appears that in only a small number of cases, where a contested bail application is made, do the magistrates question the C.P.S. assessment of bail risk. It seems then the C.P.S. have considerable influence over remand decisions made in magistrates' courts, an influence for which they are largely unaccountable.

This situation is likely to become even more marked with the implementation of the Bail (Amendment) Act 1993 in June 1994. The C.P.S. now have the right to appeal against a magistrates' remand decision in certain circumstances, with the defendant being remanded in custody during the appeal procedure. Therefore, it appears that remand decisions are increasingly being taken not by the magistrates but by professionals, the most important of which is the C.P.S. although the police also

make certain crucial decisions such as the granting of police bail. In other words, the remand decision is not a judicial decision but an executive decision which, by definition, means that those who take the decision are unaccountable for its consequences. A partial restriction on this executive power is that the defence can force the C.P.S. to explain the rationale for their decision by making a bail application. This makes the defence solicitor's role very important. Furthermore, it is not an absolute power as the magistrates do have the capacity to question the C.P.S. and, indeed, to overturn their decisions, although in practice they rarely do.

There are three possible explanations for reliance of the magistrates on the C.P.S. remand request. One is that, because the C.P.S. are professionals and the majority of magistrates are lay magistrates, it is a case of lay people bowing to the expert judgement of the C.P.S.. However, although elements of this were picked up during the interviews, the fact that the stipendiary magistrate was no more likely to overturn the C.P.S. remand request makes this seem unlikely. Furthermore, if it is the professional status of the C.P.S. that is important, one would expect magistrates to deal with defence solicitors in the same way as they belong to the same profession. However, evidence from this study suggests that they are perceived somewhat differently. Secondly, it may be because the information the C.P.S. provides to the court is perceived to be objective and unbiased, whereas the information provided by the defence, which is likely to be more positive towards the defendant, is regarded as more subjective. However, although this seems a plausible explanation for cases where information is provided verbally to the court by both parties, these cases are a minority and therefore, this cannot explain the magistrates' reliance on the C.P.S.'s recommendation in the majority of cases. Finally, it may be that magistrates are prosecution-minded. This seems to be the most probable explanation although it is impossible to ascertain whether this is the cause or effect of the magistrates' high regard for both the opinion of the C.P.S. and the information they provide. Nevertheless, the consequence is that magistrates almost invariably agree with the C.P.S. assessment of bail risk and question this only when a defendant is at risk of custody and makes a bail application.

The fact that the magistrates tend to rely on the C.P.S. remand request in effect means that it is their decision about the bail risk the defendant poses which is of importance. This study did not directly look at C.P.S. decision making although it was discussed during the interviews and an analysis of their objections to bail was undertaken. The findings suggest that the C.P.S. decision is made on the basis of similar criteria to those of the magistrates. Moreover, if the magistrates usually follow the C.P.S. recommendation, it follows that the factors identified as being correlated to the magistrates' remand decision are also correlated to the C.P.S. decision. This proposition was confirmed by respondents during the interviews.

The police bail/detention decision was found to be associated with whether or not a defendant would be granted bail. If the police released a defendant on police bail s/he was highly unlikely to be granted anything other than unconditional bail by the court. This means that neither the magistrates nor the C.P.S. appear to question the decision of the police if they release a defendant on bail. If the police detain a defendant to appear at court, the court invariably either granted conditional bail or remanded the defendant in custody. The high proportion who were detained in custody and subsequently released on conditional bail reflected a policy whereby frequently the police detained defendants in custody if they believed that conditions of bail were necessary. The findings of this study were obviously skewed by this practice and it is unclear what proportion of defendants who were detained were detained because the police wanted them remanded in custody. As a consequence it was impossible to measure accurately the correlation between police and C.P.S. decisions to oppose bail and the magistrates' decisions. However, if the provision under the CJPO Bill (1993) allowing police to attach conditions to bail becomes law, the practice of detaining defendants for conditions to be attached by the courts will obviously change. This represents a further shift towards executive decisions and places more power in the hands of the police. Furthermore, the police are unlikely to have to account for their decision to the court if present practice is confirmed whereby magistrates are unlikely to question, let alone change or overturn, the decision made by the police to grant a defendant bail.

The previous court remand decision was also shown to be correlated to the outcome of subsequent remand decisions. This is not surprising if the same criteria were used for both decisions. Only 8 per cent of those previously remanded in custody were subsequently granted bail and only 2 per cent of those originally granted bail were subsequently remanded in custody. This suggests that once a remand decision has been made by a court it is rarely overturned. This is somewhat unexpected bearing in mind the supposed incidence of and publicity about offending on bail at the time of the study.

Offending related factors were generally more likely to be correlated with the remand decision than factors relating to the defendant's community ties or other circumstances. Having said this, the sex of the defendant appears to be the best predictor of whether or not a defendant will be remanded in custody. The offending related factors shown to be related to remand decisions were the nature and seriousness of the offence, the previous convictions of the defendant and the bail history of the defendant. The only community ties found to be significantly related to the decision were whether or not the defendant had an address and, if so, whether it was a local address and if the defendant was in employment. However, as a large majority of defendants are unemployed this probably has little practical significance.

The views of the participants confirmed these findings although they tended to stress the overwhelming importance of the nature and seriousness of the offence. If the nature and seriousness of the offence did not warrant a remand in custody it was generally believed that the defendant was unlikely to be so remanded. However, if it did warrant a remand in custody then other factors, such as bail history, would become important. One exception to this seemed to be if the defendant did not have an address. However, this rarely affected the decision in practice as accommodation was usually found for the defendant by the probation service.

The predominance of offending related factors in the decision reflects the importance of the ground of 'risk of further offending' to the refusal of bail which the majority of respondents believed to be overwhelmingly important. The community ties of the

defendant have little, if any, impact on this ground, which may explain why they have not been found to be important to the remand decision. The ground of risk of non-appearance appears to be a secondary consideration particularly when many defendants who abscond are simply readmitted to bail and warrants for their arrest are often not issued because of practical difficulties with their execution.

THE IMPACT OF LEGAL AND POLICY DEVELOPMENTS IN THE CRIMINAL JUSTICE SYSTEM SINCE 1976

The proportion of defendants granted bail has significantly increased since the 1970s. National statistics show that in 1970 an average of 73 per cent of defendants were granted bail (Home Office 1980a) whereas by 1992, 90 per cent of defendants were granted bail (Home Office 1993a). This study found an average bail rate of 88 per cent. The increase in the use of bail was partly a result of the introduction of the presumption of bail which, although first legally enshrined in the Bail Act 1976, was in effect in operation prior to its enactment as a result of the Working Party's (Home Office 1974) recommendations and the subsequent Home Office circular (1975). Therefore, the increase in the use of bail was more a result of a change in the climate surrounding the granting of bail than any legal changes. Another significant factor has been the pressure to reduce the prison population. However, the increase in the proportion of defendants granted bail has not resulted in a reduction in the number of defendants remanded in custody which has increased significantly in the 1980s and 1990s. Remand prisoners now constitute a quarter of the prison population (Morton, 1994). The cause of this increase has partly been the rise in the number of defendants being processed by the courts and the proportion of these that are remanded. However, the most significant single factor has been the length of time that defendants are awaiting trial which can partly be explained by an increased rate of committal to Crown Court.

Until recently, the major focus of both legal and policy changes has been to reduce the prison population. This has partly been done by attempting to increase the

restrictions placed on a defendant who is granted bail such as the imposition of conditions of bail and the requirement that a defendant reside at a bail hostel. These measures have been taken to toughen up bail and increase its credibility in the eyes of the court. However, there is some evidence that this has resulted in net-widening as bail hostels and conditions are not always used as alternatives to a remand in custody. This may in fact result in an increase in the prison remand population for two reasons. Firstly, tighter restrictions mean that defendants are more likely to breach them and the court is more likely to remand the defendant in custody as a result and, secondly, a defendant can be "up-tariffed" so that if s/he reoffends and reappears in court s/he would be more likely to be remanded in custody.

The importance of information being available to the court, especially that relating to defendants' community ties, was emphasised by the Working Party (Home Office 1974) and many of the research studies which preceded it. However, the amount of additional information verbally provided to the court during this study was minimal. In only a limited number of cases was additional information verbally presented to the court. This was most likely to be in cases where the C.P.S. was requesting a remand in custody and where the defendant was applying for bail. This also appears to be the main indicator of the variety of information provided to the court. This confirms that the C.P.S. assessment of the bail risk a defendant poses is rarely questioned by the court and that the most likely situation where additional information is provided is when defendants who are at risk of custody apply for bail. Consequently, the magistrates are not proactive in seeking additional information. Even when additional information was verbally provided to the court this tended to be about offending related factors and not the community ties of the defendant. Even the defence solicitors concentrated on providing positive information about a defendant's past and present offending although they did also provide some information concerning community ties. The lack of information about the defendant's community ties appears to be partly explained by the importance of offending related factors in remand decisions.

In addition, the perceptions of the credibility of the information provided by the

C.P.S. and the defence solicitors suggested that there was a fundamental problem with the provision of information about the defendant's community ties. Magistrates and other participants saw the information provided by defence solicitors as subjective while information provided by the C.P.S. was seen as objective. One reason for this was the perceived source of the information provided by the defence solicitor, namely the defendant, whom most respondents felt was an unreliable source. If information about the defendant's community ties is to be effectively supplied to the court it must, therefore, be independently verified.

This study has found that although Bail Information Schemes do appear to reduce the number of defendants remanded in custody they affect only a small section of the potential number of defendants remanded in custody. This is a result of participants' perceptions of them as accommodation agencies and not as providers of information. For Bail Information Schemes to become more effective they would have to change their role in order to be seen as providers of a wider selection of information which could include information relating to negative and not just positive aspects of the defendant. However, the potential for this is limited when the BISs are run by the probation service as some probation officers are hostile to any involvement in pre-trial issues. Such opposition would be likely to grow if BIS's provided negative information as this goes against the probation service's historical welfare orientation.

Bail hostels have been an important part of the policy to reduce the prison population. However, this study and the recent Government decision to cut back hostel provision suggests that they have a limited role basically because they cater for a small section of the potential prison remand population. The two main groups catered for are: those defendants who do not have an address where they can be contacted, including defendants who cannot return to an address because of the nature of their offending, and those who need to be kept out of the immediate area because of the nature of their offending. The findings also suggested that magistrates' courts without a local bail hostel were far less likely to send defendants to a hostel as a condition of their bail. Therefore, it appears that for hostel provision to be more effective at reducing the prison population hostels need to be provided

in every petty sessional division. However, this seems unlikely as the Government has announced the cancellation of the bail hostel building programme and the closure of twelve existing bail hostels. This will result in a fall in bail hostel provision from 2,597 on 1st April 1994 to 2,560 on 1 April 1995 (Prison Reform Trust 1994). The Government argued that this was a result of an over capacity in bail hostel provision. Nevertheless, this study suggests that courts would use bail hostels more often if they were located in the appropriate places.

Furthermore, the evidence suggested that other participants apart from the probation service knew little if anything about the purpose of hostels. Therefore, increased training and information may result in an increase in their use. Another issue is whether or not bail hostels are primarily alternatives to custody or could be used to provide additional safeguards for defendants who still would be granted bail. The increased supervision provided by bail hostels may be an appropriate way of attempting to reduce the number of defendants remanded in custody and to reduce the likelihood that a defendant will breach his/her bail especially in terms of reoffending. Nevertheless, the Government's announcement is more likely to signal to the courts to send fewer not more, defendants to hostels.

Another major plank of the Government policy to reduce the prison remand population has been the introduction of custody time limits. The findings of this study suggest that although they have been useful as they have focused the attention of the C.P.S. on getting the case prepared on time, they have made little practical difference as the limits were set to a time scale that was largely already met. Further, in the small number of cases where the time limits are exceeded the magistrates almost invariably grant an extension. If custody time limits are going to have a significant effect on the prison population then they must be set at a lower level than at present. This could only be achieved by an increase in resources and greater coordination between agencies so that cases could be processed more efficiently and effectively. This is an objective that may be enhanced by the local consultative committees set up as a result of the Woolf Report (1991).

The major focus of policy on the remand process has thus been to decrease the prison population. The main driving force has been the economic cost of keeping defendants in prison. Other measures have been introduced which are more blatant cost cutting exercises, for example, the limits on the number of bail applications to two as of right and the introduction of remands for 28 days, first with the consent of the defendant and then without his/her consent. These measures show the importance of economy and efficiency in the policy on bail and provide some support for the importance of bureaucratic principles in the law and policy on bail.

The study was conducted too early to assess the impact of twenty eight day remands although some respondents were critical of the idea as they believed that every defendant should have a right to appear at court every eight days. The clarification and codification of the right to two bail applications as of right by the Criminal Justice Act 1988 has stopped any major criticism of this provision although there was criticism, especially from the participants in Court A, of the difficulty in getting the court to grant fresh considerations. This is partly explained by the lack of guidelines on what is meant by fresh considerations which could be remedied by the drawing up of definitional guidelines.

The C.P.S. was created to provide an independent prosecution service as it was felt necessary to split the agency of investigation (the police) from the prosecution agency for reasons of justice. The discussion above has already highlighted the importance of the C.P.S. in the remand process. However, the findings of previous studies conducted prior to the creation of the C.P.S. also indicated that the view of the prosecution, at that time the police, was influential in magistrates' remand decisions. However, East and Doherty (1985) argued that the influence of the police was not as great as previous studies (King 1971a, Bottoms and McClean 1976) had suggested because the police only stated their remand request to the court in relatively few cases, usually when they objected to bail. However, this study has found that the influence of the prosecution on the remand decision appears to have increased as they make known their remand request in a much larger number of cases, even when they are not objecting to bail, than when the police conducted

remand hearings. Therefore, the C.P.S. are much more likely than the police were to explicitly state that the defendant could be released on bail. In other words, the C.P.S. supply a recommendation to the court even when they are not objecting to bail. Having said this, the C.P.S. only present their reasons for objecting to bail when requesting a remand in custody to the court in a minority of cases which again highlights the finding that the court rarely questions the C.P.S. assessment of bail risk.

VARIATIONS IN PRACTICE

The study found that the custody rates varied significantly between Courts A and B and Court C. Both Courts A and B had a custody rate of 9 per cent and Court C had a custody rate of 25 per cent (registers sample). The mostly likely explanation of the disparity is the fact that a stipendiary magistrate heard a large proportion of the cases in Court C and it is often assumed that they hear the more serious cases. However, for several reasons this seems to be an incomplete explanation. Firstly, the sample from Court C included decisions taken by lay magistrates; secondly, the sample from Court A included remand decisions taken by a stipendiary magistrate. A similar disparity was also found in the observation sample and again the explanation of the stipendiary magistrate hearing the more serious cases seems unlikely as the courts in the sample all heard more serious cases or at least a higher proportion of those remanded in custody because the courtrooms observed were the only ones that had access to the court cells.

The explanation seems to lie with two factors: the reputation of the court and expectations of the participants, principally the C.P.S. and the defence.

Figure 10.1

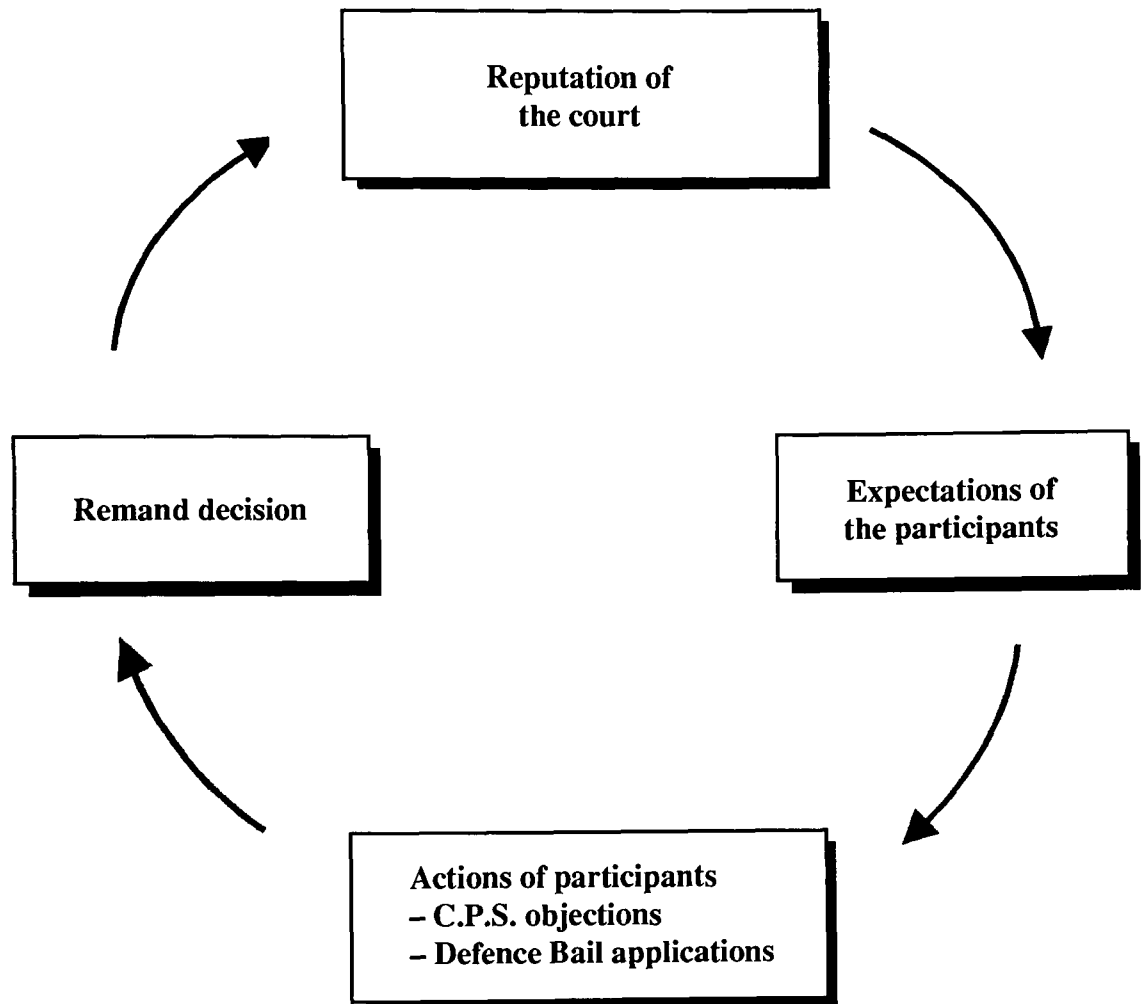


Figure 10.1 illustrates the explanation of the differences in the custody rates between the courts. Each court had an identifiable reputation according to the participants. This reputation or court culture affected the expectations that the participants had in respect of the defendants that would be granted or refused bail. For example, members of the C.P.S. stated that they did not always apply for a remand in custody in all of the cases where they felt it to be appropriate because they thought that the magistrates would not remand a large number of defendants in custody. In fact, some participants suggested that courts had a form of quota system for the number of defendants it would remand in custody. These expectations of what the court might do affected the actions of other participants. For example, it would affect the number and the nature of the cases in which the C.P.S. applied for a remand in custody and it would also affect whether or not the defence solicitors would advise his/her client to make a bail application. The C.P.S. remand request has been shown to be very influential in the magistrates' decision and even when the defence do make an application the magistrates almost always agree with the C.P.S. request, although this is slightly less likely if the defence do make a bail application. Therefore, the actions of the C.P.S. and the defence seem to be the most important influence upon the magistrates' remand decision. The remand decision, theoretically made by the magistrates but which in practice largely reflects the C.P.S. remand request, feeds back into the reputation of the court as lenient or harsh in terms of the granting of bail.

Therefore, Court C had a reputation as a relatively harsh court in terms of bail which meant that it was perceived to be more likely to remand a defendant in custody. As a result, both the C.P.S. and defence solicitors expected a larger proportion of defendants to be remanded in custody. The C.P.S., therefore, requested that a higher proportion of defendants be remanded in custody while defendants were less likely to make a bail application in Court C than in the other courts in the study (45 per cent in Court C, 61 per cent in Court B and 74 per cent in Court A as a percentage of those where the C.P.S. request a remand in custody (observation sample)). As a consequence a higher number of defendants were remanded in custody by Court C which fuels its reputation as a harsh court. The

reputation of Court C is obviously coloured by the fact that it has a stipendiary magistrate and one with a harsh reputation which must partly explain the higher custody rate in that court. This also illustrates that, although the reputation of the court as a whole is important, the reputations of individual magistrates also affect the actions of participants on any one day.

The reputation of a court does not necessarily have to reflect the actual remand decisions of the court. Although the remand decisions made in the court do play a part, it is equally possible that a particular decision or individual may have a significant effect on the court's reputation. Furthermore, a particular magistrate's view does not necessarily equate with the general reputation of the court. Nevertheless, the court's reputation or culture is probably influential on individual magistrates especially as the majority of magistrates' training is undertaken on the job or by the Clerk of the court. Therefore, magistrates are socialised into the particular culture of a court. It is for this reason that the reputation is relatively static over time although it may be changed through a change in personnel, for example, the chairperson of the bench, the Clerk to the Justices or the appointment of a stipendiary magistrate. The reputation of a court can also be affected by its local environment and the media portrayal of its decisions.

It is impossible from the findings of this study to establish whether the reputation of the court also affects the work of the police and their decision as to whether or not to detain a defendant for court. However, a similar proportion of defendants in the observation sample in Court A and C were detained by the police (48 per cent and 44 per cent respectively) and a significantly higher proportion in Court B (62 per cent) which tends to suggest that the number of defendants the police detain is not affected by the reputation of the court. However, in interview the police did say that their perception of how the court dealt with defendants who had breached their bail affected the action they took. For example, Court A had a reputation for rebailing defendants who had breached their conditions, therefore the police stated that they often warned the defendant rather than arresting him/her.

This discussion tends to suggest that the culture of the court is paramount in any explanation of remand decisions. Court culture is produced by the interaction of the law and policy, the responsibilities of each individual and agency, their particular views and actions, the relationship between individuals and agencies and local environmental factors. The importance of a court culture is illustrated by the findings that although the C.P.S. play a leading role in decisions, their decisions are affected by their expectations of the court and the culture in which it works. This finding is similar to that of a recent study undertaken in Scotland (Paterson and Whittaker 1994) which argued:

... that prosecutors' attitudes to bail in undertaking cases was tempered by their view of likely court response. The assessment of likely court outcome is an important way in which courtroom practices influence decision making prior to court. (Paterson and Whittaker 1994:xiv).

Paterson and Whittaker go on to argue that,

... An understanding of bail decision making ... requires a recognition of the criminal justice system's institutional structure and the ways in which the parts of that structure (police, prosecutors and courts) interact. This sets the form and helps to shape the content of professional relationships which criminal justice practitioners develop in individual localities. This interaction produces a localised criminal justice culture which sets the assumptions within which practitioners work to interpret the law in particular cases. For this reason an understanding of criminal justice responses in dealing with particular cases requires an understanding of the significance of the features of the cases within the local criminal justice culture. (Paterson and Whittaker, 1994:3).

In other words, it is the culture of the court which probably largely explains the disparities in bail rates between the courts in this study although the expectations of participants and, therefore, their actions are also affected by the individual magistrates who sit on a particular day.

THE PRACTICAL OPERATION OF THE REMAND PROCESS AND ITS RELATIONSHIP WITH THE LAW

The Bail Act 1976 provides the basic legal framework in which remand decisions are made. The majority of respondents viewed this legislation as sufficient as it provides flexibility for the remand decisions to balance the protection of the public with the rights of the defendant who is innocent until proven guilty. Consequently, it appears that major legislative change is unnecessary.

This study has found that it is the main provisions of the Bail Act 1976 which provide a framework for remand decisions. In other words, the grounds for refusal of bail and the considerations contained in the legislation do provide a structure for the decisions which are made. However, most respondents stressed the overwhelming importance of the seriousness of the offence which is not in itself a ground for the refusal of bail but a factor to be taken into consideration under the Bail Act 1976. Even the C.P.S. decisions, although more likely to be framed in terms of the Bail Act 1976 as members of the C.P.S. are legally trained, reflected the importance of the nature and seriousness of the offence. Therefore, the findings suggest that the magistrates and the prosecution have elevated the importance of nature and seriousness of the offence so that it is used as a ground for refusing bail rather than simply a factor to be considered. There was also some evidence that other non-legal considerations such as a defendant's demeanour and gender played a significant part in decisions. Furthermore, respondents believed that magistrates often reached a decision and then justified this by using grounds under the Bail Act 1976. In other words, magistrates' stated reasons for their decision did not always coincide with their decision making processes. Furthermore, reasons were not always given to the court for the decisions which had been made, which is a requirement under the Bail Act 1976.

The main criticism of the current remand process by respondents was that the law was not accurately applied which resulted in a disjunction between those who should be remanded in custody and those that actually are. In other words, there is a gap

between the law and its practical operation. The most pronounced example of this during the study was the claim that magistrates, despite an allegation that a defendant had offended on bail, invariably rebailed the defendant. Many respondents felt that the law provided that these defendants could and should be remanded in custody but that this was being ignored by the magistrates. Many respondents also felt that decisions were not taken on the basis of legal criteria but because of other non-legal considerations. For these reasons many respondents wished to see stipendiary magistrates overseeing remand hearings although many recognised that this would increase the number of defendants remanded in custody. However, the widespread use of stipendiary magistrates is unlikely to be implemented in the near future and may not be the most appropriate response if it is likely to result in more defendants being remanded in custody.

The problems highlighted with the administration of the law and the difference between the practical operation of the law on bail and the substance of the law is a consequence of the discretion provided to the decision makers. The law provides general principles on which to base remand decisions which have to be interpreted by decision makers and it is this need for interpretation that is the source of discretionary power. Consequently, the imprecise nature of the law enables the actors to make decisions that can be validated by the law without actually breaking any legal rules. There were, therefore, very few instances of blatant unlawful practice. Perhaps the only unlawful practice frequently seen was that magistrates often did not give reasons for remanding a defendant either in custody or on conditional bail. The imprecise nature of the law also enables magistrates, and the C.P.S., whether in different courts or just different benches, to make different decisions in what appear to be similar circumstances and, therefore, accounts for much of the inconsistent application of the law found in this study. Therefore, the findings of this study suggest that the wide ranging and discretionary nature of the law on bail enables the magistrates and the C.P.S. to interpret the law and justify whatever action they wish to take. This situation led to wide criticism of the application of the law but not the law itself during the interviews. Nevertheless, the law itself cannot escape comment as it is the law which enables decision makers to

make decisions which although not illegal are contrary to either the statement or ethos of the law.

Another problem with the practical operation of the law was that of offending on bail. This can probably be partly explained by the national publicity surrounding this problem at the time of the study. Yet, despite its predominance in discussions during the interviews this factor was rarely verbally mentioned to the court. In only 7.5 per cent of cases (114) was information provided to the court that alleged that a defendant had committed an offence on bail and in only 0.7 per cent of cases (11) was it a prosecution objection to bail (Hucklesby 1992). Nevertheless, the majority of respondents did see offending on bail as a problem and one which was not being tackled by the courts. The respondents' explanation for this tended to focus on the non-application of the present law on bail by magistrates. In other words, magistrates were not remanding in custody those who had allegedly reoffended on bail when the law already permits them to do so on the ground of risk of further offences. However, the importance of the C.P.S.'s influence on the magistrate's decision tends to suggest that the C.P.S. are also not applying the ground of risk of further offences to defendants who have allegedly reoffended on bail. This is a conclusion which appears to be confirmed by the findings of the court observations where it was mentioned verbally in court on very few occasions.

Suggestions of ways of alleviating problems focused on two main solutions: the removal of the right to bail and the removal of the presumption of bail. The removal of the right to bail would require a change in the law providing that under no circumstances would a defendant who had allegedly offended on bail be released on bail. This solution was felt by many other participants to be too inflexible as it would not allow any of the circumstances of the offence or the defendant to be taken into account by the court. It would also result in a large increase in the number of defendants remanded in custody. The second approach would allow these considerations to be taken into account by the court. However, it is debatable whether this approach actually requires a change in the law as it is in theory already provided for which returns the argument to the problem of the application of the

present law on bail.

THE PRESENT AND FUTURE LAW AND POLICY ON BAIL

The findings of this study have suggested that, at least from the point of view of some of the participants in the process, the problems of the remand process are more to do with the way that the law operates in practice than the law itself. This tends to suggest that the recent and proposed legislative changes are for the most part unnecessary. What can be said for certain about these changes is that they have been ill thought out and are largely a product of the law and order rhetoric of the present Government or, to put it crudely, "kneejerk" legislation.

One of the clear objectives of the current Government's rhetoric is to be perceived as the party of law and order (see Loveday 1992). This coupled with the significance of law and order to the general public means that the Government must be seen to be tackling any issues identified as contributing to the law and order problem. In addition, the political importance of law and order means that the opposition parties are unlikely to vehemently object to any proposals for fear of losing public support. In fact, it was the Labour Party who first supported the Private Member's Bill, the Bail (Amendment) Bill 1993. Therefore, recent and proposed changes to the law relating to bail can be said to be the product of the hardened political attitude towards offenders. This change in the political climate away from the rights of the defendant is partly a result of the appointment of the present Home Secretary, Michael Howard, a leading right wing Conservative who, either because of his own philosophy or as a reaction to public opinion, has presided over a radical hardening of views and policy on law and order. This appears to have resulted in an increase in the prison remand population (Prison Reform Trust 1994) and is an example of how a change in the political and public climate surrounding bail may affect remand decisions without a change in the law. This effect is similar, although in the reverse direction, to the change in the political climate prior to the Bail Act 1976 which resulted in an increased use of bail.

Probably the best example of this "kneejerk" legislation is clause 20 of the CJPO Bill (1993) which provides that defendants charged with certain serious crimes (murder, attempted murder, rape and attempted rape and manslaughter) who have already been convicted of or charged with a similar offence cannot be granted bail. This clause is a result of a few highly publicised cases which involved defendants on bail. In practice, this provision will have little effect on the practical operation of the remand process as it will cover a very limited number of cases. However, it has far reaching consequences for the remand process as it is a significant departure from the overall philosophy of the presumption of innocence and the presumption of bail.

This is no space here to give a detailed critique of recent legislative proposals. Nevertheless, if the findings of this study are an accurate reflection of the practical operation of the remand process then the recent and proposed legislation is unnecessary. The Bail (Amendment) Act 1993 which came into force in June 1994 provides the prosecution with the right of appeal against magistrates' decisions to grant bail but only when the C.P.S. objected to bail. However, the findings of this study suggest that this situation rarely occurs in the present system. Nonetheless, it is likely to result in an increase in the number of cases in which the C.P.S. object to bail. This is especially the case if, as this study suggests, the C.P.S. do not apply for a remand in custody in every case where they think it is necessary. In other words, the right of appeal will change the expectations of the C.P.S. so that they are likely to apply for a greater number of remands in custody. As a consequence, the number of defendants remanded in custody is likely to increase thus raising the prison remand population.

Similarly, this study suggests that a change in the law relating to offending on bail is unnecessary as provisions are already enshrined in the Bail Act 1976 to allow defendants who have allegedly reoffended to be remanded in custody where necessary (Sch. 1 exception to bail - risk of further offences). Overturning the presumption of bail, as clause 21 of the CJPO Bill (1993) does, will make it very difficult for anyone accused of committing an offence whilst on bail to be granted

bail even for the most minor offences. This will result in a rise in the prison remand population. Most fundamentally, it must be noted that these offences have not been proved against the defendant and may never be.

So although the recent and proposed legislation on bail is largely unnecessary it may have far reaching consequences both for the level of the prison remand population and for the fundamental right to bail.

‘BIFURCATION’ - A REMAND POLICY

The radical change in the philosophy underlying the law on bail in recent years, albeit for only a proportion of defendants, is part of a wider trend in criminal justice policy. Since the introduction of the Criminal Justice Act 1988 there has been a ‘bifurcation’ (Bottoms 1977,1980) policy applied to the remand system. This followed a similar trend in all the major stages of the criminal justice system, most notably in sentencing especially since the Criminal Justice Act 1991. ‘Bifurcation’ can, thus, be characterised as the major philosophy of the criminal justice system. It is a twin track policy that distinguishes between run of the mill, non-violent offenders and serious offenders who are deemed to be a risk to the public. For the first group the policy is one of decarceration, or ‘punishment or supervision in the community’ both before and after trial. For the second group, who allegedly pose a risk to the public, the policy is one of preventative detention which involves imposing and increasing the length of their detention to the maximum.

This ‘bifurcation’ approach can be clearly seen in both recent changes and proposed changes to the law relating to bail. There is, therefore, still a reliance on methods to reduce the remand prison population for run of the mill, non-violent offenders. Firstly, for these defendants there still exists a presumption in favour of bail where, theoretically, the reasons for overturning this presumption have to be explained in open court. Secondly, the Government have funded initiatives such as bail hostels and BISs (although their support of bail hostels now seems to have been withdrawn)

whose aims are to reduce the number of unnecessary remands in custody. Conversely, for defendants who have allegedly committed serious offences and who are a potential risk to the public the policy is increasingly to remand them in custody. One example of this is s.153 of the Criminal Justice Act 1988, which requires the court to give reasons for releasing defendants charged with certain serious offences on bail. This policy is being taken further by the proposed changes to the remand system contained in the CJPO Bill 1993 which overturns the right to bail for defendants who have allegedly committed certain serious offences on a second occasion, whether convicted or on bail. This is a clear crime control initiative. However, it is a reaction to a small number of cases which is unlikely to have a major impact on the numbers remanded in custody as the number of defendants it affects is likely to be very small.

This policy is based on an assessment of risk which as Nash (1992) argues "... returns us to the dangerousness debate of the 1970's and 1980's." (Nash 1992, 337). He argues that the definitions of seriousness used in relation to the Criminal Justice Act 1991, which correspond to those proposed in the bail legislation, are similar to conceptions of dangerousness which have been shown to be fundamentally flawed. Firstly, there are problems of definition in that any definition would be imprecise as it cannot be applied with scientific precision. What is serious to one person may not be serious to another and, furthermore, seriousness often depends upon the circumstances of the offence, a problem identified by many of the respondents in interview. However, an offence based classification, as used in the present and proposed bail legislation, seems to provide some answers to this as it would identify possible candidates for preventative detention. Nevertheless, Scott (1977) argued that even using this measure there would still be some cases included where it was unnecessary to detain a defendant and some excluded where it was necessary to detain a defendant as the circumstances of each offence varied. To this extent it would limit the discretion of the court especially in 'one off' cases where the likelihood of repetition is slight. Secondly, research has shown that predictions of dangerousness are inaccurate and are more likely to be wrong than right (Scott 1977, Walker 1980, Bottoms 1982). Thirdly, even if reasonably accurate short term

predictions could be made, as Scott (1977) suggested, this accuracy depended upon full and accurate information and assessment of the defendant's circumstances which, as this study has shown, is unlikely to be the case at remand hearings where the information available is often very limited.

One exception to this 'bifurcation' policy in the remand system is the policy concerning defendants charged with multiple offences allegedly committed on bail. Clause 21 of the CJPO Bill 1993 overturns the right to bail for those defendants who allegedly commit an offence on bail. Some hint of the bifurcation policy can be found in the new clause as it only pertains to indictable or either way offences. Nonetheless, this is a weak definition as these classifications cover a huge number and range of offences some of which are not necessarily of a serious nature, for example it includes theft which could be of £5 or less. It appears that the basic policy is one of crime prevention for all but the most minor of offences. In fact, the genesis of the clause comes more from an attempt to tackle the arguable increase in mainly property offences, especially car related crime, committed whilst on bail (Avon and Somerset 1991, Northumbria Police 1991, Morgan 1992). Defendants in this category, except for persistent 'joyriders', were one of the main targets, under the Criminal Justice Act 1991, for increased use of community based sentences which seems incompatible with the new proposals for remand. Furthermore, the refusal of bail for multiple non-violent offences seems contrary to the idea of proportionality based on seriousness of the offence for sentencing stressed under the Criminal Justice Act 1991.

Moreover, even the research that contributed to the pressure to change the law (Avon and Somerset 1991, Northumbria Police 1991) recognised that a small group of 'hard core' defendants was responsible for the problem which is backed up by the findings of this study. However, a wide ranging provision such as this will affect far more defendants than this hard core. In short, it will result in the "up-tariffing" of defendants. As a consequence the prison remand population is likely to increase which demonstrates a reversal of the policy of the past 25 years to reduce the prison population. It is also another example of the increasing predominance of crime

control over due process, as these defendants have not been convicted but are deemed to be in need of preventative detention. This appears to suggest that 'persistent offenders', even non-violent persistent offenders, are part of the second track of the bifurcation policy, at least at the pre-trial stage.

CRIME CONTROL OR DUE PROCESS?

The predominance of the grounds of risk of further offending in C.P.S. objections to bail, the importance of offending related factors and the fact that much of the information provided verbally to the courts relates to offending related factors suggests that it is **crime control** considerations that are dominant in the remand process. This is confirmed by the frequent references to the issue of offending on bail during the interviews. In addition, the importance of executively made decisions points to the dominance of crime control principles. On the other hand, the presumption in favour of bail, which was adhered to in a large majority of cases, suggests that both the law and policy on bail and the practical operation of the remand process also involve **due process** considerations.

In addition, the objectives of **economy and efficiency** play a large part in the practical operation of the remand process. For example, non-appearance warrants were not issued as they take a substantial period of time to be executed and the defendant could probably be returned to court faster by his/her solicitor. Practices like this reduce the time and work involved and reflect the importance of bureaucratic considerations.

The importance of economy and efficiency can also be seen in the drive to reduce public expenditure which has significantly impacted on the law and policy relating to the remand process. This suggests that efficiency has primacy over due process considerations, at least in some areas which have the effect of supporting crime control interests. This can be seen in the introduction of a limit to two bail applications as of right (S.154, Criminal Justice Act 1988) where court time is saved

as further bail applications need not be heard. Another example is the provision, introduced in 1991, to permit a defendant to be remanded for up to 28 days without his/her consent. Both of these reduce the likelihood that defendants will be released on bail.

Furthermore, custody time limits were introduced to stop the increasing amount of time that defendants were spending in custody prior to trial. Even though their major aim was to bring down the prison population by cutting waiting times in the criminal justice process (a major cause of the 'remand explosion'), they also provide an example of an efficiency measure that can work for due process as the time limits also provide a safeguard that a defendant cannot be remanded in custody for long periods, without review and good cause. Nevertheless, this study has shown that they rarely affect the practical operation of the remand process. Yet, custody time limits do provide evidence contrary to Blumberg's (1967) assertion that bureaucratic principles are inextricably linked with crime control as some of the measures introduced into the remand process provide protection for the defendant, thereby providing due process consideration, and are likely to result in more defendants being released on bail. For example bail hostels and BISs are designed to permit a larger number of defendants to be released on bail. Indeed, BISs provide a further obstacle to remanding a defendant in custody as the C.P.S. are more likely to have to defend their decision if the BIS make an assessment of bail risk. They also provide relevant information on the basis of which decisions can be made, thereby enhancing due process.

The law and policy on, and practical operation of, the remand process have several contradictory aims. These contradictory aims can be partly explained by the bifurcation policy in the remand process but also reflect other considerations about the defendant, his/her offending behaviour and lifestyle. However, the paramount importance of the nature and seriousness of the offence at every stage of the remand decision illustrates **the dominance of crime control over due process**. Further evidence of its predominance is the primacy of the ground for refusal of bail of 'risk of further offences'. Even the majority of the information provided to the court is

related to offending related factors and not due process. This is not to say that other criteria are not present, particularly with the importance of bureaucratic considerations. Nevertheless, the process generally emphasises crime control considerations over due process, not to the exclusion of due process or bureaucratic principles, but in tandem with them. The relative importance of the considerations depends upon the defendant, his/her circumstances and lifestyle, the alleged offences, previous offending and bail history. In other words, the relative importance of these considerations depends upon the characteristics of the case in question. However, during the study and particularly afterwards, there has been a more radical shift towards crime control and away from due process as the move to overturn the presumption of bail for those who have offended on bail illustrates.

The movement in the law and policy on bail away from due process towards crime control criteria particularly addressing the problem of offending on bail can also be seen in the attitudes of the respondents. Most respondents saw offending on bail as a problem. These included not only the police and the C.P.S., as expected, but also from the defence solicitors and the court clerks. In fact, if the defence solicitors believed that someone should be in custody but were forced to make a bail application they made it known to the court that they believed the defendant should be in custody. This tends to suggest that for some offenders at least, crime control considerations are paramount in the remand process and for the participants who work in it. It also supports the contention that there is a general hardening of attitudes towards offenders. Nevertheless, most respondents felt that there should be a presumption of bail and therefore, supported due process considerations unless they were "persistent offenders" who were well known in the criminal justice system. This supports the bifurcation policy in the law and policy on bail and suggests that this can also be found in the practice of the courts.

THE IMPORTANCE OF THE WIDER CONTEXT

Throughout this study the importance of the wider context of the remand process has been stressed. This is most notable in the policy of reducing the prison population by increasing the numbers granted bail. This policy is inextricably linked to two of the fundamental political policies of the present Government: reducing the level of public expenditure and seeking to provide services (for example, community care and punishment) in the community. Both of these objectives have brought about significant changes not only in the remand process but also in the wider criminal justice system. The introduction and increasing provision of privately run prison establishments and the introduction, albeit experimentally, of privately run prison escort services are clear examples. Both of these also illustrate the impact of political philosophies, in these cases privatisation, on the law and policy relating to the criminal justice system.

Public and political opinion also affect the policies and practice relating to bail. This has been amply illustrated in the debate on offending on bail and the subsequent proposed changes in the law, and by the recent increase in the prison remand population to over 12,000 (Prison Reform Trust 1994).

Furthermore, any proposals to change the system must take into account the wider context. This is primarily because any change could be undermined or subverted by other parts of the system. Also of importance are economic and political considerations. The best example of the problem is the general feeling by many of the respondents that the remand process would be improved if stipendiary magistrates made remand decisions. However, this proposal taps into a much wider debate about the role of the lay magistracy and the professionalisation of criminal justice generally. It is highly unlikely, even if the principle of having professional magistrates were to be accepted, that they would be directed towards remand decisions rather than trials and sentencing decisions. Furthermore, a system of stipendiary magistrates is likely to be more expensive than a system of lay magistrates although this may be off-set by an increase in efficiency and

productivity.

In summary, the law and policy on bail and the practical operation of the remand process have conflicting aims, characterised by due process, crime control and bureaucratic principles, the hierarchy of which changes to reflect not only specific problems within the remand process but also issues and priorities of the criminal justice system as a whole and the wider political and economic context.

PROSPECTS FOR FUTURE DEVELOPMENT

The steady increase in the number of defendants granted bail since the 1970s is part of the wider move towards the rights of the defendant. Other examples are the extension of legal aid and the provision of duty solicitors schemes. In other words, these constitute a general move towards due process. This move has led to a perception by some that the rights of the defendant are more important than the rights of the victim or indeed the community, in other words, a perception that the rights of the defendant have overriding importance in the criminal justice system. The resultant backlash against due process and the rights of defendants is partly a result of the increase in the level of recorded crime and in particular the rise in violent crime, partly a result of the rise of the victims' movement and partly a change in the climate of public and political opinion. Whatever its cause, it has resulted in law and policy shifting back to favouring the prosecution, for example, their right of appeal under the Bail (Amendment) Act 1993 which is likely to result in an increase in the number of defendants remanded in custody. This being the case and the fact that the political and public climate is unlikely to change radically in the near future, two issues become particularly important: (i) the issue of the prison remand conditions, (ii) the process of selection of defendants so that only those who need to be remanded in custody are so remanded and those who can safely be granted bail are released to await trial.

Despite the strategies introduced to reduce the number of defendants remanded in

custody, the prison remand population has continued to increase and is likely to do so particularly in the light of recent proposed legislation. If this upward trend continues, attention should be turned to the conditions in which the defendants are kept while remanded in custody. The Woolf Report (1991) made various recommendations concerning the conditions in which remand prisoners are housed which will not be discussed here as they are well documented elsewhere (Morgan 1994). Suffice it to say that Woolf's recommendations concerning minimum standards and rights for all prisoners are especially necessary for remand prisoners. Moreover, Woolf's recommendations for small community prisons in which defendants can be housed in their own community and the increase in the "permeability" of the walls of those prisons are particularly applicable to remand prisoners as it would permit them to maintain their community ties which is an important consideration when over half of those remanded in custody are acquitted or receive non-custodial sentences. This could be further enhanced by permitting them to work outside the prison (subject to security clearance) and perhaps even to allow home visits. In addition, as the immediate prospects for improved conditions within remand wings and prisons are slight, perhaps it is time once again to look at the issue of compensation for those acquitted after spending time remanded in custody.

A concerted effort should be made to decrease the waiting time for trial both for those remanded on bail and in custody. If the criminal process could be speeded up so that a defendant usually spent no more than two to three weeks awaiting trial it would decrease prison overcrowding, improve the conditions in remand wings and reduce the level of offending on bail. To this end custody time limits should be progressively shortened and should include the introduction of time limits from committal to disposal. A similar scheme of bail time limits should also be introduced so that defendants do not spend a lengthy period on bail increasing the likelihood that they would reoffend on bail. These measures would obviously require greater cooperation between the criminal justice agencies and would require the smooth running of the system which may be enhanced by the criminal justice consultative committees which have been created as a result of the Woolf Report (1991).

The problem of offending on bail has highlighted the fact that the current operation of the law on bail results in some defendants being released on bail who should be remanded in custody while others are arguably remanded in custody unnecessarily. If this situation is to be altered then a more satisfactory system of selection needs to be put in place. The major vehicle for this must be to increase the quantity and quality of information supplied to the court, relating to both positive and negative factors concerning the bail risk the defendant poses. This study has shown that when a bail application is made by a defendant s/he does increase his/her chances of being granted bail. There may be something atypical about the cases which resulted in these findings but it seems likely that if positive information is put to the court about the defendant it increases the likelihood of being granted bail. Furthermore, when information about alleged offending on bail is provided to the court the magistrates seem more likely to remand the defendant in custody. What is not clear is whether these are the right decisions. Only a study looking to the final disposal of defendants after a remand decision would go some way to assessing this. One major obstacle to the defence supplying information to the court seems to be their reluctance to make a bail application when they perceive it as likely to fail because of their concerns over their own credibility in the eyes of the other participants. However, a defence solicitor's remit is to apply for bail in every case where the defendant wishes. Perhaps a change in court procedure to make it the court's role to ask the defendant if s/he wishes to apply for bail would change this situation.

Nevertheless, the main way to increase the information provided to the court seems to be through the utilisation of BISs. The BIS's role could and should be widened to provide not only positive but negative information and arguably feasibility studies should be undertaken to see whether the provision of the information would be used more effectively if it was also provided to the court directly. However, the biggest problem is that BISs are perceived to have only a limited role, that of accommodation agency, rather than an information agency. This may be improved by more effective training and information distribution about their role. There was also some evidence the BISs were perceived to be on the side of the defendant rather than being independent assessors. This, coupled with problems within the probation

service about their role, welfare versus control, and the resistance by some to any involvement in the pre-trial process tends to suggest that perhaps it is time to set up an agency with a specific remit of dealing with pre-trial issues.

However, these proposals are tinkering with a system which is ill-coordinated and which has conflicting aims at each stage. These are particularly apparent in the remand system which runs from the beginning of the criminal process to the final disposal of a defendant and involves all the major criminal justice agencies. Furthermore, because of the primary political importance of criminal justice issues and, also recently the remand process, any changes will have to be both politically and publicly acceptable. Bearing this in mind, any changes to the present system are more likely to be to the detriment of due process than to its advantage. The different agencies involved and the political significance also makes it difficult to foresee a coherent long term policy for the whole criminal justice system which is acceptable to those who work within it and to the public as a whole. However, a coordinated, well planned criminal justice policy which is devised and implemented in the light of research findings and consultation with the agencies involved is a necessary step to provide a workable and integrated system which provides justice and protection for the largest possible number of people.

POSTSCRIPT

This study has been the first in a decade to look at the remand process in England and Wales in its entirety. The research was not bound by any policy objectives and therefore was able to observe and comment on the remand process and the findings from an objective standpoint. The major problem with the undertaking of this project was the lack of any comparable national statistics with which to check the representativeness of the findings. There was also a lack of statistics on the operation of the remand process in the individual courts studied. In fact, there is a dearth of material on the operation of the remand process which was prominently displayed during the debate on offending on bail. This lack of information contributed to the

success of the campaign for legislative changes which this study has argued are unnecessary.

The conclusion of this study must be, therefore, a call for further research into the remand process and an increase in the number and quality of routinely collected statistics relating to the remand process so that, at least, any future debates can be founded on up-to-date knowledge, not the lack of it. After all, the remand process has far reaching consequences, not only for defendants but the whole criminal justice system as the people it deals with are innocent in the eyes of the law. As a result the remand process is a major barometer of the level of justice within society.

APPENDICES

APPENDIX 1

THE PRO FORMA USED DURING COURT OBSERVATIONS

Court Schedule

1. Defendants Name:
.....
2. Address:
.....
.....
3. Type of Address: ☐ Local ☐ Non-Local
 ☐ Hostel ☐ NFA
4. Gender: ☐ Female ☐ Male
5. Age/Date of Birth
6. Ethnic Origin: ☐ Asian ☐ Black
 ☐ White ☐ Mixed ☐ Other
7. Date of offence:

8. Offences Charged With:

- | | |
|---|---|
| <input type="checkbox"/> Assault (ABH,GBH,
wounding) | <input type="checkbox"/> Abduction (or
false imprisonment) |
| <input type="checkbox"/> Arson | <input type="checkbox"/> Breach of Peace |
| <input type="checkbox"/> Burglary (Domestic) | <input type="checkbox"/> Burglary (Not
Domestic) |
| <input type="checkbox"/> Conspiracy | <input type="checkbox"/> Criminal Damage |
| <input type="checkbox"/> Drink Offences | <input type="checkbox"/> Fraud, Forgery &
Deception |
| <input type="checkbox"/> Drugs Offences | <input type="checkbox"/> Immigration Offences |
| <input type="checkbox"/> Motoring Offences | <input type="checkbox"/> Perjury & Obstruction
Justice |
| <input type="checkbox"/> Murder &
Manslaughter | <input type="checkbox"/> Public Order Offences |
| <input type="checkbox"/> Assault on or
interfering with Police | <input type="checkbox"/> Robbery |
| <input type="checkbox"/> Rape | <input type="checkbox"/> Other Sexual Offences |
| <input type="checkbox"/> Theft or Handling
Stolen Goods | <input type="checkbox"/> Weapons Offences |
| <input type="checkbox"/> Other | |

.....

Money/injury involved:

.....

9. Legal Representation Y N

10. Type of Hearing: 1st ☐ Plea ☐
 M.O.T ☐ Committal ☐ Breach ☐

11. After Conviction Y N
Why?

.....

12. End of Case:

13. No in Case: Single ☐ Joint ☐ Multiple ☐

INFORMATION

Prosecution=red

Defence=blue

Defendant=green

1 2 3

1. Present Offence

2. Previous convictions

- a) similar
 - b) different
 - c) none
-

3. Previous custodial Sentence

4. Plea Guilty
 Not Guilty

5. Others on Bail/Codefendants

6. Previous Bail recorded Y
 N

7. Previous failure to attend

8. Other Offences

- a) Bail
- b) Custody

9. Future Sentence

10. Residence

11. Employment

12. Partner

13. Children

14. Marital Problems

15. Medical

16. Education

17. Financial (including income)

18. Character references

19. Delay

20. Other

21. Drugs/Alcohol

22. Family

1ST APPEARANCE

1. Police Bail [] Police Custody [] Summons []
2. Bail mentioned by:
 - a) Clerk []
 - b) Bench []
 - c) CPS []
 - d) Defence []
 - e) Formal Application []
3. CPS Request:
 - U. Bail [] C. Bail [] Custody []
4. CPS Objections: Y [] N []
Reasons:
 - i) Fail to surrender to Bail []
 - a) Likely to abscond []
 - b) Previously failed to appear []
 - c) NFA []
 - d) Nature/Seriousness of Offence []
 - e) Other []
 - ii) Commit a further offence while on Bail []
 - a) Likely to re-offend []
 - b) On Bail when charged with current offence []
 - c) Previous offences while on Bail []
 - d) Current enquires into further offences []
 - e) Nature/Nos. Previous Convictions []
 - f) Property Outstanding []
 - g) Other []
 - iii) Likely to interfere with Witness of Course of Justice []
 - iv) For own welfare []
 - v) To check identity []
 - vi) Other []

5. Outcome:

U Bail [] C Bail [] Police Custody []
Custody [] Technical Bail []

6. Conditional Bail

- i) Residence []
- ii) Reporting []
 - a) Daily []
 - b) Weekly []
 - c) Twice Weekly []
 - d) Before next appearance []
 - e) Other []
- iii) Curfew []
- iv) Keep away from witness []
- v) Keep away from complainant []
- vi) Keep out of a particular area/place []
- vii) Keep away from co-defendant []
- viii) Surety []
 - How much?
 - Who?
- ix) Other []

7. Reasons [] Y [] N

- a) Fail to Surrender to Bail []
- b) Due to seriousness of offence or likely custodial penalty []
- c) Lack of fixed address []
- d) Other factors []
- e) Commit further offence []
- f) Interfere with witness or course of Justice []

8. Adjourned to:

9. Attend Next Time: [] Y [] N

SUBSEQUENT APPEARANCE

1. 2nd [] Subsequent [] N/A []

2. Previous Remand Decision

Police Bail [] U Bail [] C Bail []
Custody []

3. Conditional Bail

	Previous	Changed
i) Residence []	[]	[]
ii) Reporting []	[]	[]
a) Daily []	[]	[]
b) Weekly []	[]	[]
c) Twice Weekly []	[]	[]
d) Before next appearance []	[]	[]
e) Other []	[]	[]
iii) Curfew []	[]	[]
iv) Keep away from witness []	[]	[]
v) Keep away from complainant []	[]	[]
vi) Keep away from Co-Defendant []	[]	[]
vii) Keep out particular area/place []	[]	[]
viii) Surety []	[]	[]
How much?		
Who?		
ix) Other []	[]	[]

4. CPS request:

U Bail [] C. Bail [] Custody []

5. Custody

1. Formal Bail Application [] Y [] N

2. Nos. of Previous Applications

0 1 2 3 N/A N/A more than 2

3. Applications for change in circumstances
 [] Y [] N
 State:
4. Bench give change in circumstances
 [] Y [] N
5. Previous Bail application to Judge in Chamber
 [] Y [] N
6. CPS Objections Y [] N []
- a) Fail to surrender to bail []
 i) Likely to abscond []
 ii) Previously failed to appear []
 iii) NFA []
 iv) Nature/Seriousness of Offence []
 v) Other []
- b) Commit a further offence while on bail
 []
 i) likely to reoffend []
 ii) Previously failed to appear []
 iii) Current offences while on bail []
 iv) Current enquiries into
 further offences []
 v) Nature/Nos. of previous
 convictions []
 vi) Property outstanding []
 vii) Other []
- c) Likely to interfere with witnesses or course
 of Justice []
- d) For own welfare []
- e) To check identity []
- f) Other []

5. Reasons ☐ Y ☐ N
- Previous Changed
- i) Fail to surrender to Bail
due to seriousness of
charge or likely
custodial penalty ☐ ☐
- ii) Lack of fixed address ☐ ☐
- iii) Other Factors ☐ ☐
- iv) Commit further offence ☐ ☐
- v) Interfere with witnesses ☐ ☐
6. Outcome:
- Police custody ☐ U Bail ☐ C Bail ☐
- Custody ☐
7. Changes to Conditions ☐ Y ☐ N
- Why?
8. Adjourned To:
9. Attend next time: ☐ Y ☐ N

NON APPEARANCE

1. Statutory [] Non-Statutory []

2.	Nos of Times:	1	2	3	N/A
----	---------------	---	---	---	-----

3. Why?

i) Medical []

ii) Prison []

iii) Other Court []

iv) Moved from area []

v) Not known []

vi Other []

4. Outcome

i) Extended Bail []

ii) Extended Custody []

iii) Warrant already issued []

iv) Warrant with Bail []

v) Warrant without Bail []

5. Not produced by prison []

APPENDIX 2

PRO FORMA USED TO RECORD INFORMATION FROM THE COURT REGISTERS

Court Records

Court:

Date:

Stage of Case:

1st [] Subsequent [] Plea [] MOT []
Committal [] Breach []

Adjourned From:

Remand: Police Bail []
Police Custody []
Bail - Unconditional []
Bail - Conditional []
Custody []
Summons []

Name:

Address:

D.O.B.:

Employment Status: Unemployed [] Employed []
Occupation:.....

Offences Charged With:

- | | |
|---|--|
| <input type="checkbox"/> Assault (ABH,GBH,
wounding) | <input type="checkbox"/> Abduction (or
false imprisonment |
| <input type="checkbox"/> Arson | <input type="checkbox"/> Breach of Peace |
| <input type="checkbox"/> Burglary (Domestic) | <input type="checkbox"/> Burglary (Not
Domestic) |
| <input type="checkbox"/> Conspiracy | <input type="checkbox"/> Criminal Damage |
| <input type="checkbox"/> Drink Offences | <input type="checkbox"/> Fraud, Forgery &
Deception |
| <input type="checkbox"/> Drugs Offences | <input type="checkbox"/> Immigration Offences |
| <input type="checkbox"/> Motoring Offences | <input type="checkbox"/> Perjury & Obstruction
Justice |
| <input type="checkbox"/> Murder &
Manslaughter | <input type="checkbox"/> Public Order Offences |
| <input type="checkbox"/> Assault on or
interfering with Police | <input type="checkbox"/> Robbery |
| <input type="checkbox"/> Rape | <input type="checkbox"/> Other Sexual Offences |
| <input type="checkbox"/> Theft or Handling
Stolen Goods | <input type="checkbox"/> Weapons Offences |
| <input type="checkbox"/> Other | |

.....

Money/injury involved:

.....

Nos in case: Single ☐ Joint ☐ Multiple ☐

Plea:

Outcome:	Police Custody	<input type="checkbox"/>
	Bail - Unconditional	<input type="checkbox"/>
	Conditional	<input type="checkbox"/>
	Custody	<input type="checkbox"/>

Adjourned To:

APPENDIX 3

PARTICIPANTS QUESTIONNAIRE

THE REMAND PROCESS IN MAGISTRATES' COURTS

INTRODUCTION

This questionnaire forms part of a three year research project looking at the remand process in magistrates' courts in the South Wales area. The project is significant because it is the only large scale research being undertaken into the remand process as a whole at the present time. Indeed, it is the only study of its kind to have been undertaken since the early 1980s.

The questionnaire forms an integral part of the project as it provides an insight into the remand process which can only be gained from those directly involved in the day to day running of the process. As one of those who is involved in the remand process you have a specialist knowledge of the process and thus, are an important source of information for the research. The data from the questionnaires and the follow up interviews will complement the large amount of statistical data already collected which will provide a thorough insight into the workings of the remand process.

I am grateful for your cooperation with the completion of the questionnaire and the interview that will follow. I hope that the length of the questionnaire does not put you off! However, its length reflects the complexity of the process being studied and will facilitate a wide ranging and in depth analysis of the remand process to be undertaken.

PLEASE READ CAREFULLY

- 1) Your responses will, of course, be totally confidential and no subsequent quotation will be attributable to particular individuals. Your name will only be used for administrative purposes.
- 2) If you regularly attend a court, please fill in the questionnaire from your experiences of the remand process in the magistrates court that you attend most frequently.
- 3) If you are not directly involved in the remand process in court please fill in the questionnaire from your particular or general experiences of the process.
- 4) If the space provided for your answer is insufficient please continue on a separate sheet clearly numbering your answer.
- 5) Please could you answer all the questions even if you have no experience of the particular issue raised in the question.
- 6) If you are unclear as to what a question is asking, please leave it blank and we will look at it during the interview.
- 7) The questionnaires will be collected by me when I come to interview you. The interviews will take the form of a follow up to the questionnaire elaborating on areas which have been highlighted in your answers as reflecting your particular interest and expertise.

Thank you for your cooperation.

THE REMAND PROCESS IN MAGISTRATES' COURTS

- 1) What do you regard as the main features of the law on bail?

.....
.....
.....
.....
.....
.....
.....

- 2) Do you think that the law on bail is adequate?

yes [] no [] don't know []

Please give reasons for your answer.

.....
.....
.....
.....
.....

If no, should the law on bail be changed?

yes [] no [] don't know []

If yes, can you suggest what changes should be made?

.....
.....
.....
.....
.....

3) Do you think that the number of defendants granted bail should be:

- a) increased []
- b) stay the same without any changes to the existing remand process []
- c) stay the same with improved selection of defendants []
- d) decreased []
- f) other? []

Please state

.....
.....

Please give reasons for your answer.

.....
.....
.....
.....

4) What measures, if any, could be introduced to allow more defendants to be remanded on bail?

.....
.....
.....
.....
.....

5) Is there a need for improved selection of those defendants who can safely be granted bail and those that cannot?

yes [] no [] don't know []

Please give reasons for your answer.

.....
.....
.....

- 6) What measures could be taken to ensure, as far as possible, that those who can safely be granted bail and those that cannot are correctly selected?

.....

- 7) What **should** be the major criterion for the refusal of bail?

.....

- 8) In your opinion, should the law specify that defendants be remanded in custody if they:

yes no don't
 know.

- | | | | |
|--|-----|-----|-----|
| a) commit an offence on bail | [] | [] | [] |
| b) have breached conditions of
bail | [] | [] | [] |
| c) have no fixed address | [] | [] | [] |
| d) fail to surrender to the court | [] | [] | [] |
| e) have failed to surrender in
the past | [] | [] | [] |
| f) are accused of domestic burglary | [] | [] | [] |
| g) are accused of robbery | [] | [] | [] |
| h) are accused of rape | [] | [] | [] |
| i) are accused of murder | [] | [] | [] |
| j) are a citizen of another country | [] | [] | [] |
| k) require medical/psychiatric
reports | [] | [] | [] |
| l) interfere with witnesses? | [] | [] | [] |

Please state any other grounds on which a defendant should be remanded in custody.

.....

- 9) If you regularly visit more than one court, do you think that the remand decisions in those courts are consistent with each other?

yes [] no [] don't know []

If no, in what way(s) do they differ?

.....
.....
.....

- 10) In the court that you visit most frequently, do you think that remand decisions are consistent between different benches of magistrates?

yes [] no [] don't know []

If no, in what ways are they inconsistent?

.....
.....
.....
.....

- 11) From your observations of bail decisions made by magistrates' how important do the following factors appear to be: (Please tick as appropriate).

	very quite imp. imp.	un- imp.
1) the strength of the prosecution's case	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
2) the strength of the defence's case	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
3) the magistrates' that are sitting	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
4) the demeanour of the defendant	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
5) whether the defendant appears in custody	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
6) the type of offence allegedly committed	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
7) whether the alleged offence involved violence against the person(s)	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
8) whether the offence was committed during the hours of darkness	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
9) who the victim(s) was	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
10) the strength of the evidence	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
11) whether the defendant intends to plead or has pleaded guilty	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
12) whether a surety is available	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
13) the sex of the defendant	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
14) the age of the defendant	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
15) the ethnic origin of the defendant	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>

	very imp.	quite imp.	un- imp.
16) whether the defendant is in employment	[]	[]	[]
17) whether the defendant has a partner	[]	[]	[]
18) whether the defendant has children	[]	[]	[]
19) whether there are problems within a relationship with a partner	[]	[]	[]
20) other family ties	[]	[]	[]
21) medical problems	[]	[]	[]
22) the education of the defendant	[]	[]	[]
23) the defendants financial situation	[]	[]	[]
24) any drug or alcohol problems	[]	[]	[]
25) the previous convictions of the defendant	[]	[]	[]
26) whether the defendant has served a custodial sentence in the past	[]	[]	[]
27) the police bail/custody decision	[]	[]	[]
28) whether the defendant has in the past failed to surrender to bail	[]	[]	[]
29) the length of time the case is going to take to conclude	[]	[]	[]
30) the probable future sentence if the person is convicted	[]	[]	[]
31) whether the C.P.S. object to bail	[]	[]	[]

	very imp.	quite imp.	un- imp.
32) whether the defendant has committed the offence on bail	[]	[]	[]
33) whether the defendant has a stable address	[]	[]	[]
34) whether the defendant may interfere with witnesses	[]	[]	[]
35) whether there is property outstanding	[]	[]	[]
36) other?	[]	[]	[]

Please state:

.....

- 12) How important do you think the following factors **should** be in the magistrates remand decision: (Please tick as appropriate).

	very imp.	quite imp.	un- imp.
1) the strength of the prosecution's case	[]	[]	[]
2) the strength of the defence's case	[]	[]	[]
3) the magistrates' that are sitting	[]	[]	[]
4) the demeanour of the defendant	[]	[]	[]
5) whether the defendant appears in custody	[]	[]	[]
6) the type of offence allegedly committed	[]	[]	[]
7) whether the alleged offence involved violence against the person(s)	[]	[]	[]

	very imp.	quite imp.	un- imp.
8) whether the offence was committed during the hours of darkness	[]	[]	[]
9) who the victim(s) was	[]	[]	[]
10) the strength of the evidence	[]	[]	[]
11) whether the defendant intends to plead or has pleaded guilty	[]	[]	[]
12) whether a surety is available	[]	[]	[]
13) the sex of the defendant	[]	[]	[]
14) the age of the defendant	[]	[]	[]
15) the ethnic origin of the defendant	[]	[]	[]
16) whether the defendant is in employment	[]	[]	[]
17) whether the defendant has a partner	[]	[]	[]
18) whether the defendant has children	[]	[]	[]
19) whether there are problems within a relationship with a partner	[]	[]	[]
20) other family ties	[]	[]	[]
21) medical problems	[]	[]	[]
22) the education of the defendant	[]	[]	[]
23) the defendants financial situation	[]	[]	[]
24) any drug or alcohol problems	[]	[]	[]
25) the previous convictions of the defendant	[]	[]	[]

	very	quite	un-
	imp.	imp.	imp.
26) whether the defendant has served a custodial sentence in the past	[]	[]	[]
27) the police bail/custody decision	[]	[]	[]
28) whether the defendant has in the past failed to surrender to bail	[]	[]	[]
29) the length of time the case is going to take to conclude	[]	[]	[]
30) the probable future sentence if the person is convicted	[]	[]	[]
31) whether the C.P.S. object to bail	[]	[]	[]
32) whether the defendant has committed the offence on bail	[]	[]	[]
33) whether the defendant has a stable address	[]	[]	[]
34) whether the defendant may interfere with witnesses	[]	[]	[]
35) whether there is property outstanding	[]	[]	[]
36) other?	[]	[]	[]

Please state:

.....

13) Do you think the following factors affect the remand decision made by magistrates: (please tick where appropriate)

	alot times	some- little	very	never
1) the industrial dispute at Cardiff prison last year	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) industrial action in the prison system as a whole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) overcrowding in remand prisons	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) that the defendant may be remanded to police cells	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5) delays in the processing of evidence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6) other delays in the processing of the case	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7) that co-defendants are at large	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8) that the co-defendants are not being produced to the court from prison	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9) that the defendant is not being produced to the court from prison	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10) custody time limits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11) public feeling about the circumstances of the offence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12) local issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13) government guidelines on issues of remand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14) other?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please state:

14) What would you say is the quality of the information given by the C.P.S. to the magistrates in court?

very poor [] poor [] fair [] good []
very good []

15) What would you say is the quality of the information given by the defence to the magistrates in court?

very poor [] poor [] fair [] good []
very good []

16) What information is most useful to the magistrates to help them make an appropriate remand decision?

.....
.....
.....

17) Can you suggest ways of increasing the amount and improving the quality of information available to the magistrates?

.....
.....
.....

18) What do you understand to be the main purpose of the Bail Information Schemes: (please tick as many as appropriate)

- 1) to provide information about the defendant to the magistrates []
- 2) to provide information about the defendant to the C.P.S. []
- 3) to find accommodation for the defendant []
- 4) to find, if possible, a bail hostel place for the defendant []
- 5) other? []

Please state

.....
.....
.....

19) Do you think that Bail Information Schemes are useful?

yes [] no [] don't know []

Please give reasons for your answer.

.....
.....
.....
.....

20) Would the information collected by the Bail Information Scheme be more effectively utilised if it was given to the magistrates directly?

yes [] no [] don't know []

21) What do you understand by the term "no fixed abode"?
.....
.....
.....
.....

22) What sort of defendants are likely to be remanded to bail hostels?
.....
.....
.....
.....

23) Does the availability of bail hostel accommodation result in defendants, who would otherwise be remanded in custody, being granted bail to reside at a hostel?

yes [] no [] don't know []

Please give reasons for your answer

.....
.....
.....
.....

If yes, how many defendants who are remanded to bail hostels, do you think would otherwise be remanded in custody?

none [] 1 to 25% [] 26 to 50% []
51 to 75% [] 76%+ [] don't know []

24) Would stricter regimes in bail hostels, eg. more restrictive curfew hours, result in more defendants being diverted from custody?

yes [] no [] don't know []

Please give reasons for your answer.

.....
.....
.....
.....

25) In your experience, what proportion of those granted bail in the local area reoffend whilst on bail?

.....

26) Do you think that offending whilst on bail is a problem in the local area?

yes [] no [] don't know []

Please give reasons for your answer

.....
.....
.....
.....

27) The Home Secretary has announced plans to make offending whilst on bail an aggravating factor in determining sentence. What effect do you think this will have on the incidence of offending whilst on bail:

- 1) large increase in offending on bail []
- 2) small increase in offending on bail []
- 3) no effect on of offending on bail []
- 4) small decrease in offending on bail []
- 5) large decrease in offending on bail []
- 6) other? []

Please state

.....
.....
.....

28) Can you suggest any other possible solutions to offending whilst on bail?

.....
.....
.....
.....

29) The role of the magistrates' clerk during remand hearings is to: (please tick as many as necessary)

- a) advise the magistrates on the law only ☐
- b) to sum up the arguments from both sides where a bail application has been made without making a judgement as to the outcome of the remand hearing ☐
- c) to offer advice as to the outcome of the remand hearing ☐
- d) other? ☐

Please state

.....

30) How often do you think the following conditions of bail, if at all, attain their aims:

- | | always | some-
times | never |
|---|--------------------------|--------------------------|--------------------------|
| 1) residence | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2) reporting to the police | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3) curfew | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4) to keep away from particular person(s) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5) to keep away from particular place or area | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6) to provide a surety | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7) to provide a security | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8) to surrender their passport | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9) other(s)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Please state

.....

31) Do conditions of bail: (please tick where appropriate)

	always	some- times	never
1) deter defendants from committing further offences	[]	[]	[]
2) deter defendants from absconding	[]	[]	[]
3) prevent defendants interfering with witnesses	[]	[]	[]
4) provide protection for witnesses /victims	[]	[]	[]
5) prevent defendants being remanded in custody	[]	[]	[]
6) provide safeguards that are not provided by unconditional bail	[]	[]	[]
7) reduce the overall risks of granting a defendant bail	[]	[]	[]
8) indicate that the magistrates are aware that the defendant made be a bad bail risk	[]	[]	[]
9) other?	[]	[]	[]

Please state

.....

32) Do you think that the use of bail conditions is excessive?

yes [] no [] don't know []

Please give reasons for your answer

.....
.....
.....

33) Is conditional bail generally used for those defendants who would normally be granted unconditional bail to provide extra safeguards?

yes [] no [] don't know []

Please give reasons for your answer.

.....
.....
.....
.....

34) In your experience what happens to defendants who break their conditions of bail?

.....
.....
.....
.....

35) In your opinion what **should** happen to defendants who break their conditions of bail?

.....
.....
.....
.....

36) Should there be a criminal offence of breach of bail conditions?

yes [] no [] don't know []

37) What sort of defendants do not appear at court?

.....
.....
.....
.....

38) In your experience what do magistrates see as acceptable reasons for non-attendance?

.....
.....
.....
.....

39) In your experience what factors influence the magistrates as to what course of action to take when a defendant fails to appear in court?

.....
.....
.....
.....

40) Do you think that the course of action taken when defendants do not appear for their court hearing are consistent between **different magistrates** in the same court?

yes [] no [] don't know []

If no, how are they different?

.....
.....
.....

41) Do you think that the course of action taken by magistrates' when defendants do not appear for their court hearing, are consistent between **different courts**?

yes [] no [] don't know []

If no, how are they different?

.....
.....
.....
.....

42) Do you think that the actual reasons on which the magistrates refuse bail deviate from the statutory grounds under the Bail Act (1976)?

yes [] no [] don't know []

If yes, in what way(s) do they differ?

.....
.....
.....
.....

43) In your experience what constitutes a change in circumstances? Please give examples.

.....
.....
.....
.....

44) In your opinion what **should** constitute a change in circumstances? Please give examples.

.....
.....
.....

The questionnaire given to the magistrates:

**THE REMAND PROCESS IN MAGISTRATES COURTS
(MAGISTRATES)**

1) What do you regard as the main features of the law on bail?

.....
.....
.....
.....

2) Do you think that the law on bail is adequate?

yes [] no [] don't know []

Please give reasons for your answer.

.....
.....
.....
.....

If no, should the law on bail be changed?

yes [] no [] don't know []

If yes, can you suggest what changes should be made?

.....
.....
.....
.....

3) Do you think that the number of defendants granted bail should be:

- a) increased ☐
- b) stay the same without any changes to the existing remand process ☐
- c) stay the same with improved selection of defendants ☐
- d) decreased ☐
- e) other ☐

Please state

.....
.....

Please give reasons for your answer.

.....
.....
.....
.....

4) What measures, if any, could be introduced to allow more defendants to be remanded on bail?

.....
.....
.....
.....
.....

5) Is there a need for improved selection of those defendants who can safely be granted bail and those that cannot?

yes ☐ no ☐ don't know ☐

Please give reasons for your answer.

.....
.....
.....

- 6) What measures could be taken to ensure, as far as possible, that those who can safely be granted bail and those that cannot are correctly selected?

- 7) What should be the major criterion for the refusal of bail?

- 8) In your opinion should the law specify that defendants be kept in custody if they:
- | | yes | no | don't know. |
|---|--------------------------|--------------------------|--------------------------|
| a) commit an offence on bail | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b) have breached conditions of bail | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c) are of no fixed address | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d) fail to surrender to the court | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e) have failed to surrender in the past | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f) are accused of domestic burglary | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| g) are accused of robbery | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| h) are accused of rape. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| i) are accused of murder. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| j) are a citizen of another country. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| k) require medical/psychiatric reports | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| l) interfere with witnesses? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
- Please state any other grounds on which a defendant should be remanded in custody.

- 9) Do you think that the remand decisions your court makes are consistent with other courts in the area?

yes [] no [] don't know []

If no, in what way(s) do they differ?

.....
.....
.....
.....

- 10) Do you think that the remand decisions you make are consistent with other magistrates who sit in the same court?

yes [] no [] don't know []

If no, in what ways are they inconsistent?

.....
.....
.....
.....

- 11) Do you always agree with the remand decisions made by the bench of which you are a part?

yes [] no [] don,t know []

If no, in what way(s) and for what reasons do they differ?

.....
.....
.....
.....

12) Do you think that the remand decisions you make are consistent over time?

yes [] no [] don't know []

If no, in what way(s) are they different?

.....
.....
.....

13) What training have you received in relation to the remand procedure?

.....
.....
.....
.....

14) Do you receive ongoing training in relation to the bail procedure?

yes [] no [] don't know []

If yes, how often do you receive the training?

.....
.....
.....
.....

15) What form does your training take?

.....
.....
.....
.....

16) Do you think that your training, in relation to bail, is adequate?

yes [] no [] don't know []

If no, in what way(s) is it inadequate?

.....

17) Can you suggest any way(s) in which your training in relation to the remand procedure maybe improved?

.....

18) How important are the following factors in the bail decisions that you are involved in; (please tick as appropriate).

	very imp.	quite imp.	un- imp.
1) the strength of the prosecution's case	[]	[]	[]
2) the strength of the defence's case	[]	[]	[]
3) the demeanour of the defendant	[]	[]	[]
4) whether the defendant appears in custody	[]	[]	[]
5) the type of offence allegedly committed	[]	[]	[]
6) whether the alleged offence involved violence against the person(s)	[]	[]	[]

	very	quite	un-
	imp.	imp.	imp.
7) whether the offence was committed during the hours of darkness	[]	[]	[]
8) who the victim(s) was	[]	[]	[]
9) the strength of the evidence	[]	[]	[]
10) whether the defendant intends to plead or has pleaded guilty	[]	[]	[]
11) whether a surety is available	[]	[]	[]
12) the sex of the defendant	[]	[]	[]
13) the age of the defendant	[]	[]	[]
14) the ethnic origin of the defendant	[]	[]	[]
15) whether the defendant is in employment	[]	[]	[]
16) whether the defendant has a partner	[]	[]	[]
17) whether the defendant has children	[]	[]	[]
18) whether there are problems within a relationship with a partner	[]	[]	[]
19) other family ties	[]	[]	[]
20) medical problems	[]	[]	[]
21) the education of the defendant	[]	[]	[]
22) the defendants financial situation	[]	[]	[]
23) any drug or alcohol problems	[]	[]	[]
24) the previous convictions of the defendant	[]	[]	[]

	very	quite	un-
	imp.	imp.	imp.
25) whether the defendant has served a custodial sentence in the past	[]	[]	[]
26) the police bail/custody decision	[]	[]	[]
27) whether the defendant has in the past failed to surrender to bail	[]	[]	[]
28) the length of time the case is going to take to conclude	[]	[]	[]
29) the probable future sentence if the person is convicted	[]	[]	[]
30) whether the C.P.S. object to bail	[]	[]	[]
31) whether the defendant has committed the offence on bail	[]	[]	[]
32) whether the defendant has a stable address	[]	[]	[]
33) whether the defendant may interfere with witnesses	[]	[]	[]
34) whether there is property outstanding	[]	[]	[]
35) other?	[]	[]	[]

Please state:

.....
.....
.....

19) Do the following factors affect your remand decisions: (please tick where appropriate)

alot some- very never
times little

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| 1) the industrial dispute at Cardiff prison last year | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2) industrial action in the prison system as a whole | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3) overcrowding in remand prisons | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4) that the defendant may be remanded to police cells | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5) delays in the processing of evidence | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6) other delays in the processing of the case | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7) that co-defendants are at large | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8) that the co-defendants are not being produced to the court from prison | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9) that the defendant is not being produced to the court from prison | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10) custody time limits | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11) public feeling about the circumstances of the offence | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12) local issues | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13) government guidelines on issues of remand | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14) other? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Please state:

20) What would you say is the quality of the information given to you, as a magistrate, by the C.P.S. in court?

very poor [] poor [] fair [] good [] very good []

21) What would you say is the quality of the information given to you, as a magistrate, by the defence in court?

very poor [] poor [] fair [] good [] very good []

22) What information is the most useful to you to help you make an appropriate remand decision?

.....
.....
.....
.....

23) Can you suggest ways of increasing the amount and improving the quality of information available to you?

.....
.....
.....
.....

24) What do you understand to be the main purpose of the Bail Information Schemes: (please tick as appropriate)

1) to provide information about the defendant to the magistrates []

2) to provide information about the defendant to the C.P.S. []

3) to find accommodation for the defendant []

4) to find, if possible, a bail hostel place for the defendant []

5) other? []

Please state

.....

25) Do you think that Bail Information Schemes are useful?

yes [] no [] don't know []

Please give reasons for your answer.

.....
.....
.....
.....

26) Would the information collected by the Bail Information Scheme be more efficiently utilised if it was given to the magistrates directly?

yes [] no [] don't know []

27) What do you understand by the term "no fixed abode"?

.....
.....
.....
.....

28) What sort of defendants are likely to be remanded to bail hostels?

.....
.....
.....
.....

29) Does the availability of bail hostel accommodation result in defendants, who would otherwise be remanded in custody, being granted bail to reside at a hostel?

yes [] no [] don't know []

Please give reasons for your answer

.....
.....
.....
.....

If yes, how many defendants who are placed in bail hostels, do you think would otherwise be remanded in custody?

0% [] 1 - 25% [] 26 - 50% [] 51 - 75% []
76%+ [] don't know [].

30) Would stricter regimes in bail hostels, e.g. more restrictive curfew hours, result in more defendants being diverted from custody?

yes [] no [] don't know []

Please give reasons for your answer.

.....
.....
.....
.....

31) In your experience, what proportion of those granted bail in the local area reoffend whilst on bail?
.....

32) Do you think that offending whilst on bail is a problem in the local area?

yes [] no [] don't know []

33) The Home Secretary has announced plans to make offending whilst on bail an aggravating factor in determining sentence. What effect do you think this will have on the incidence of offending whilst on bail:

- 1) large increase in offending on bail []
- 2) small increase in offending on bail []
- 3) no effect on offending on bail []
- 4) small decrease in offending on bail []
- 5) large decrease in offending on bail []
- 6) other? []

Please state

.....
.....

34) Can you suggest any other possible solutions to offending whilst on bail?

.....
.....
.....
.....

35) The role of the magistrates' clerk during remand hearings is to: (tick as many categories as necessary)

a) advise the magistrates on the law only ☐

b) to sum up the arguments from both sides where a bail application has been made without making an judgement as to the outcome ☐

c) to offer advice as to the outcome of the remand hearing ☐

d) other? ☐

Please state:

.....

36) How often do you think the following conditions of bail, if at all, attain their aims:

	always	some- times	never
1) residence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) reporting to the police	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) curfew	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) to keep away from particular person(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5) to keep away from particular place or area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6) to provide a surety	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7) to provide a security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8) to surrender their passport	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9) other(s)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please state

.....

37) Do conditions of bail: (please tick where appropriate)

	always	some- times	never
1) deter defendants from committing further offences	[]	[]	[]
2) deter defendants from absconding	[]	[]	[]
3) prevent defendants interfering with witnesses	[]	[]	[]
4) provide protection for witnesses /victims	[]	[]	[]
5) prevent defendants being remanded in custody	[]	[]	[]
6) provide safeguards that are not provided by unconditional bail	[]	[]	[]
7) reduce the overall risks of granting a defendant bail	[]	[]	[]
8) indicate that the magistrates are aware that the defendant made be a bad bail risk	[]	[]	[]
9) other?	[]	[]	[]

Please state

.....

38) Do you think that the use of bail conditions is excessive?

yes [] no [] don't know []

Please give reasons for your answer.

.....
.....
.....
.....

39) Is conditional bail generally used for those defendants who would normally be granted unconditional bail to provide extra safeguards?

yes [] no [] don't know []

Please give reasons for your answer.

.....
.....
.....
.....

40) In your experience what happens to defendants who break their conditions of bail?

.....
.....
.....
.....

41) In your opinion what **should** happen to defendants who break their conditions of bail?

.....
.....
.....
.....

42) Should there be a criminal offence of breach of bail conditions?

yes [] no [] don't know []

43) What sort of defendants do not appear in court?

.....
.....
.....
.....

44) As a magistrate what do you see as acceptable reasons for non-attendance?

.....
.....
.....
.....

45) What factors influence you as to what course of action to take when a defendant fails to appear in court?

.....
.....
.....
.....

46) Do you think that the course of action taken by you when defendants do not appear for their court hearing are consistent with the decisions made by **other magistrates** in the court where you sit?

yes [] no [] don't know []

If no, how are they different?

.....
.....
.....

47) Do you think that the course of action taken by you when defendants do not appear for their court hearing are consistent with the decisions made by **other courts**?

yes [] no [] don't know []

If no, how are they different?

.....
.....
.....
.....

48) Do you think that the actual reasons on which magistrates refuse bail deviate from the statutory grounds under the Bail Act (1976)?

yes [] no [] don't know []

If yes, in what way(s) do they differ?

.....
.....
.....
.....

49) In your experience what constitutes a change in circumstances? Please give examples.

.....
.....
.....
.....

50) In your opinion what **should** constitute a change in circumstances? Please give examples.

.....
.....
.....

APPENDIX 4

PART IV (ss.34-52) OF THE POLICE AND CRIMINAL EVIDENCE ACT 1984

A person is in police detention when (s.118):

- i) s/he has been taken to a police station after being arrested for an offence; or
- ii) s/he is arrested at a police station after attending voluntarily at the station or accompanying a constable to it; and
 - s/he is detained there; or
 - is detained elsewhere in the charge of the constable,

except that a person who is at a court after being charged is not in police detention for those purposes.

Police bail of persons arrested but not charged

S.34(1) of the Act provides that a person arrested for an offence shall not be kept in police detention except in accordance with Part IV of the Act. S.34 provides that, except where it appears to the custody officer that a person is unlawfully at large, the custody officer must order the immediate release of a person in police detention if:

- i) the grounds for detention have ceased to apply; and
- ii) there are no other grounds on which continued detention could be justified.

A person so released must be released without bail unless certain conditions are satisfied. Where the conditions are satisfied, the release must be on bail. The conditions are:

- i) where it appears to the custody officer that there is a need for further investigation of any matter in accordance with which the person was detained; or
- ii) where it appears to the custody officer that proceedings may be taken against the person detained in respect of any such matter.

S.35 provides that where a person is arrested for an offence without a warrant or under a warrant not endorsed for bail, and where a person returns to a police station to answer bail, the custody officer should determine whether or not there is sufficient evidence to charge that person. If s/he determines that there is insufficient evidence then the person must be released either on bail or without bail, although the custody officer can authorise the person to be kept in police detention if s/he has reasonable grounds for believing that such a detention is necessary to secure or preserve evidence relating to an offence for which s/he is under arrest or to obtain such evidence by questioning him/her. A written record of the grounds for such a detention must be made as soon as is practicable.

Police bail of persons charged with an offence

S.38 deals with the custody officer's duties after a person has been charged. Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer must order his release from police detention, either on bail or without bail, unless;

- i) his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him/her as his/her name and address is his/her real name or address;
- ii) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his/her own protection or to prevent him/her from causing physical injury to any other person or from causing loss or damage to property; or
- iii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail or that his/her detention is necessary to prevent him/her from interfering with the administration of justice or with the investigation of offences or of a particular offence.

Where a custody officer authorises the detention of a person who has been charged, s/he must, as soon as is practicable, make a written record of the grounds for detention.

Under s.40 in the case of persons being detained by the police both before and after charge, in connection with the investigation of an offence, his/her detention must be reviewed at periodic intervals laid down in this section.

Persons kept in police custody

S. 46 provides that if a person is charged with an offence and is kept in police detention after being charged, s/he must be brought before a magistrates' court as soon as is practicable and in any event, not later than the first sitting after s/he is charged. If no magistrates' court is sitting either on the day s/he was charged or the next day, the custody officer must notify the clerk to the justices, who must arrange for a magistrates' court to sit not later than the day after which s/he was charged (except if the day is Christmas Day, Good Friday, or a Sunday, in which case the court must sit on the following day).

Persons granted police bail

Under s.47, a release on bail under Part IV of the Police and Criminal Evidence Act 1984 (P.A.C.E.) is a release on bail granted in accordance with the Bail Act 1976. However, the police do not have the power to attach conditions to bail (a point that will be discussed later). Persons who are released on bail under Part IV of the Act are subject to a duty:

- i) to appear before a magistrates' court at such time and such place; or
- ii) to attend at such police station at such time, as the custody officer may appoint.

Remands in police custody

S.48 provides that a magistrates' court may commit a person to detention at the police station for a period not exceeding three clear days. Where such an order is made:

- i) the person must not be kept in police detention unless there is a need for him

- to be detained for the purposes of enquiries into other offences;
- ii) s/he must be brought back before the magistrates' court which committed him as soon as the need ceases;
 - iii) s/he must be treated as a person in police detention to whom the duties under s.39 of P.A.C.E. 1984 (responsibilities in relation to persons detained) relate;
 - iv) his/her detention shall be subject to periodic review at the time set out under s.40 of that Act.

APPENDIX 5

DIFFERENCES BETWEEN THE TYPES OF CASES HEARD IN THE THREE COURTS FOR THE REGISTERS SAMPLE

To analyse whether or not differences in the operation of the remand process found in the study were real or could be due to differences in the samples from each court, an analysis was undertaken to compare the samples for the courts in the registers sample.

Address

There are differences in the proportion of defendants who live locally and non locally in the registers sample. Only 51 eight per cent of defendants who appeared in Court C lived locally compared to 88 per cent in Court A and 85 per cent in Court B. The marked difference between the proportion of defendants who lived locally and those that lived non locally between Courts A and B and Court C can probably be explained by differences in the boundaries used for recording purposes. For Courts A and B the city boundaries equated almost exactly to the petty sessional division in which the courts operated and as a result it was relatively easy to produce a boundary between local and non local areas and easy to distinguish these in court. However, for Court C it was difficult to distinguish what the court would believe was a local address. This was because Court C was part of a rural petty sessional division which covered a wide geographical area where the courts which constituted the division only sat on particular days of the week. Consequently, defendants would be transported within the petty sessional division to whatever court was sitting on that particular day. What was unclear was where the magistrates and the court perceived the boundary for the purposes of deciding whether a defendant was local or non local. The boundaries for the study were drawn up using information from the court and the geography of the area.

Nevertheless, when the address of the defendant was taken into consideration there are still disparities in the bail rate with Court C having a higher custody rate than the other two courts.

Sex

Court A has a larger proportion of females in the sample than Courts B and C (13 per cent compared to 7 per cent for Court B and 6 per cent for Court C). However, when the sex of the defendant was taken into account, there are still differences in the bail rates between the courts with Court C consistently having the highest custody rate. Furthermore, the number of females in the sample as a whole is very small and unlikely to effect the overall bail rate of the study.

Offence with which the Defendant was Charged

Table A5.1 shows that there are differences between the courts in the proportion of defendants charged with different types of offences. Yet the most striking thing is the similarity.

Table A5.1: Proportion of defendants charged with each type of offence by court (registers sample).

Offence	A (%)	Court B (%)	C (%)
Offences against the person	16	16	13
Motoring offences	5	10	13
Property Damage	7	6	5
Theft	33	29	39
Deception	8	5	5
Breaking and entering	17	20	20
Dangerous/offensive behaviour	7	8	4
Interference with police	4	4	1
Other	0	2	0
Total	1217	431	404

Having said this, there are relatively large differences in the proportion charged with motoring offences and theft between the courts. However, when these differences are taken into account (see table A5.1), differences in the bail rates still exist with Court C having a markedly higher custody rate. Court C remanded in custody a higher proportion of defendants charged with property offences than those charged with offences against the person (30 per cent compared with 25 per cent) whereas Courts A and B remanded a higher proportion of those charged with offences against the person in custody.

Table A5.2 Bail Rate by type of offence (registers sample).

Offence	A (%)	Court B (%)	C (%)
Offences against the person	83	95	75
Motoring	100	97	88
Theft	92	91	79
Breaking and entering	84	88	54
Total	679	266	266

First and Subsequent Appearances

A slightly higher proportion of defendants were appearing for the first time in Court B (35 per cent) compared to Court C (33 per cent) and Court A (28 per cent). However, when the stage of the cases was taken into consideration Court C again had the highest custody rate with 21 per cent and 29 per cent of defendants remanded in custody on their first and subsequent appearance respectively compared to 6 per cent and 11 per cent for Court A and 5 per cent and 11 per cent for Court B.

Other Factors

There are no significant differences in the sample from the courts in terms of the age of the defendant or in the numbers appearing before and after conviction. Furthermore, although there is a difference in the number charged with bail offences in different courts the number is small and therefore cannot account for the differences in bail rates between the courts.

APPENDIX 6

THE BAIL RATES FOR THE OBSERVATION SAMPLE

The overall bail rate for defendants who appeared in court from the observation sample was 78 per cent, 44 per cent on unconditional bail and 34 per cent on conditional bail. Twenty one per cent of the sample were remanded in custody (one per cent were remanded in police custody). The proportionate use of custody is relatively high compared to the national statistics which show an average of 10 per cent of defendants being remanded in custody (Home Office 1993a). Table A6.1 shows that all the courts in the sample have a custody rate higher than suggested by the national statistics. Having said this, table A6.1 also shows that there is a wide variation in the observation sample in the proportionate use of bail between the three courts in the study.

Table A6.1: Outcome of remand hearings where the defendant is present (observation sample).

Outcome	Court			
	Overall (%)	A (%)	B (%)	C (%)
Police custody	0.6	0.3	0.4	1.8
Unconditional Bail	44	50	41	31
Conditional Bail	34	34	41	27
Technical Bail	0.4	0.5	0.4	--
Total Bail Rate	78	84	82	57
Custody	21	16	17	41
Total sample	1095	626	249	220

Table A6.1 shows that a defendant who appears in Court C seems to be more than twice as likely to be remanded in custody. Courts A and B have very similar custody rates of 16 and 17 per cent respectively. Table 4.2.2 also indicates that there is a disparity between the courts in the study in the granting of unconditional bail and bail with conditions. For example, Court A remanded 34 per cent of all remanded defendants on conditional bail whereas Court B grants conditional bail to 41 per cent of all those it remands.

APPENDIX 7

DIFFERENCES BETWEEN THE TYPES OF CASES HEARD IN THE THREE COURTS FOR THE OBSERVATION SAMPLE

To analyse whether or not differences in the operation of the remand process found in the study were real or could be due to differences in the samples from each court, an analysis was undertaken to compare the samples for the courts in the observation sample.

Address

Differences were found between the number of defendants who lived locally and the number who lived non locally between the three courts. The figures for Courts A and B are very similar with 86 per cent and 83 per cent respectively of defendants living locally whereas for Court C only 51 per cent of defendants lived locally. However, this difference is probably more to do with the way the address was recorded (see above) than any real differences. Nevertheless, the differences in bail rates between the courts persisted when the address of the defendants was taken into account. Court C consistently remanded more defendants in custody than the other two courts. Although Courts A and B have similar custody rates for those who lived locally, for defendants who lived non locally Court B remanded a higher proportion in custody (23 per cent compared to 13 per cent).

Sex

Differences existed between the courts in the proportion of females in the sample. In Court A, 16 per cent of the sample were females compared to 5 per cent in Court B and 7 per cent in Court C. This could have distorted the figures as, intuitively, females are more likely to be remanded on bail. The number of women in the

sample is so small as to make comparisons meaningless. Having said that it is possible to compare custody rates for males between the courts. This shows a very similar pattern to the custody rates for the whole sample with Court C having a significantly higher custody rate than either Court A or B (43 per cent compared to 18 per cent for Court A and 19 per cent for Court B).

Age

Differences in the number of under 17's were found between courts in the observation sample. Ten per cent of the sample from Court B was under 17 compared with 4 per cent in Court A and 3 per cent in Court C. Furthermore, there was a higher proportion of 17 to 24 year olds in the sample from Court B (69 per cent compared with 56 per cent from Court A and 57 per cent from Court C). However, when age was taken into account there were still marked differences in custody rates between courts with Court C having a higher custody rate than Court A and B whatever the age of the defendant.

Offences with which the Defendant was Charged

There is a remarkable similarity between the proportion of defendants charged with each category of offence between the courts. Having said this, there are differences between the courts in the number of defendants charged with motoring offences, theft, breaking and entering and dangerous and offensive behaviour.

Table A7.1: Proportion of defendants charged with each type of offence by court (observation sample).

Offence	A (%)	Court B (%)	C (%)
Offences against the person	16	16	16
Motoring offences	9	4	3
Property Damage	4	4	5
Theft	33	22	26
Deception	8	4	4
Breaking and entering	17	34	38
Dangerous/offensive behaviour	8	12	6
Interference with police	4	5	1
Other	0	4	0
Total	867	302	297

The numbers charged with motoring offences in Courts B and C are very small and therefore any comparison of bail rates would be unreliable. An analysis of the sample shows that there are still marked differences in bail rates between the courts when the offence is taken into account.

Table A7.2 Custody Rates by type of offence (observation sample).

Offence	A (%)	Court B (%)	C (%)
Offences against the person	19	26	35
Theft	14	4	43
Breaking and entering	31	12	44
Total	398	181	174

Although Court C consistently remanded more defendants in custody, whatever the offence, the effect of the offence on the bail rate is different depending on the court.

For example, a defendant charged with theft is ten times more likely to be remanded in custody in Court C than in Court B and three times more likely to be remanded in custody in Court C than Court A. However, the differences between the courts are reduced when a defendant charged with offences against the person are analysed. Thirty five per cent of defendants charged with offences against the person in Court C were remanded in custody compared with 26 per cent from Court B and 19 per cent from Court A. Furthermore, Court C remands in custody a higher proportion of defendants charged with property offences than those charged with offences against the person whereas Court A and B remanded a higher proportion of defendants charged with offences against the person. Therefore, it seems that differences in bail rates between the samples cannot be accounted for by the type of offences charged. However, the findings do suggest that the offence with which a person is charged affects the decision in different ways depending on the court where the defendant is appearing.

First and Subsequent Stage of Case

There are differences between the courts in the proportion of defendants in the observation samples who were appearing for the first time. Only 11 per cent of defendants in Court B were appearing for the first time compared to 24 per cent in Court A and 23 per cent in Court C. Courts A and C remanded more defendants in custody on subsequent appearances whereas Court B remanded in custody more defendants on their first appearance. However, differences were still found in the bail rates for the courts with Court C remanding in custody the highest proportion of defendants whether or not they were appearing for the first time.

After Conviction

Slightly fewer defendants were appearing after they had been convicted in Court B (4 per cent) compared to Courts A and C (both 7 per cent). However, whether the defendant was appearing before or after conviction there are still differences in the bail rates between the courts with Court C still remanding a larger proportion of

defendants in custody than the other two courts.

Other Differences

There are also differences between courts in ethnic origin of defendants, whether or not they had been charged with a bail offence and whether or not they had breached conditions of bail. However, the sample sizes for these factors was so small as to make an analysis unreliable. Furthermore, the small sample sizes means that the factors, even if significant in the decision, could not account for the differences in the bail rates between the courts.

APPENDIX 8

DIFFERENCES BETWEEN THE TYPES OF CASES IN THE OBSERVATION SAMPLE AND THE REGISTERS SAMPLE

The findings of an analysis of the measurable variables from both the registers and observation sample suggest that there is a striking similarity between the samples. Even where differences in the sample were found these did not account for the disparity in bail rates between the registers and observation samples.

Stage of the Case

There is a substantial difference between the number of defendants appearing for the first time in the two samples. Twenty per cent of defendants in the observation sample were observed on their first appearance while 31 per cent were appearing for the first time in the registers sample. However, when this was controlled for it did not eradicate the differences in outcome for the registers and observation samples. It is possible that the disparity in the numbers appearing for the first time may be explained by court or, indeed, researcher recording error. The registers did not indicate explicitly whether or not the defendant was appearing for the first time but it could be ascertained from whether or not a previous remand decision had been noted on the registers. It is possible that the previous decisions of the court were not recorded accurately.

After Conviction

There is a difference between the registers sample (12 per cent) and the observational sample (6 per cent) in the proportion of remands post conviction. However, this does not eradicate the difference between the outcomes when it is taken into consideration.

The Offence with which the Defendant is Charged

For the most part there was a high concordance level between the samples in the proportion of defendants charged with each offence category. However, there are differences in the number of defendants charged with theft and breaking and entering.

Table A8.1 Differences in the proportion of defendants charged with certain types of offences between the observation and registers sample (in percentages).

	Observation Sample (%)	Registers Sample (%)
Offences against the person	16	15
Motoring	7	8
Criminal Damage	4	6
Theft	29	34
Deception	6	7
Breaking and entering	25	18
Dangerous/Offensive Behaviour	8	8
Interference with police	4	4
Total	1466	2052

However, when these were controlled for there was still a significant difference in the custody rate between the samples (for example, for breaking and entering offences only the custody rates were 21 per cent for the registers sample and 29 per cent for the observation sample). Therefore, these differences appear not to account for differences in outcome of remand hearings between the observation and registers sample.

Other Factors

There are no differences in the proportion of defendants who lived locally and those

that lived non locally or the proportion of males that make up the registers and observation samples. However, both the observation and registers sample show that females make up a higher proportion of the sample in Court A than in the other two courts. There is also no significant difference in the age distribution between the two samples with 58 per cent of the observation sample being under 25 and 56 per cent of the registers sample.

APPENDIX 9

OFFENCE CATEGORIES

The most serious offence with which a defendant was charged was recorded.

OFFENCES AGAINST THE PERSON:

Assault
Murder/manslaughter
Rape
Abduction/false imprisonment
Threats to kill
Threatening phone calls etc.
Sexual offences.
Robbery

MOTORING OFFENCES:

Motoring offences.

PROPERTY DAMAGE:

Arson
Criminal damage.

THEFT:

1) n/a - when monetary value unknown.
2) under £2000
3) over £2000
(split by maximum fine magistrates are able to impose).
Handling stolen goods
Conspiracy to do any of above.

DECEPTION:

Fraud, forgery, deception
Conspiracy to do above.

BREAKING AND ENTERING:

Burglary - commercial and domestic.
Trespass.

DANGEROUS AND OFFENSIVE CONDUCT:

Breach of the peace
Public order offences
Drink/Drug offences
Weapons offences.

INTERFERENCE WITH THE POLICE OR THE ADMINISTRATION OF JUSTICE:

Assault police
Interference with police
Perjury and obstruction of justice.
Conspiracy of any of the above.

BAIL OFFENCE:

Failure to appear
Delay in surrendering.

OTHER:

APPENDIX 10

Table A10.1 Outcome of remand hearings by the type of offence for those defendants present at the hearing (observation sample).

Offence	Total Sample (n=)	U. Bail (%)	C. Bail (%)	Custody (%)
Offences against the person	185	26	49	24
Property damage	49	35	59	6
Theft	293	56	27	17
Deception	55	62	13	25
Breaking and entering	275	35	36	29
Motoring	68	71	24	6
Dangerous and Offensive	82	44	24	32
Interference with Police/justice	40	53	35	13
Total	1047	45	34	22

Table A10.1 shows that there are differences in custody rates for those defendants who were present for the hearing for different types of offences. These results are broadly in line with what would be expected with motoring offences and property damage having relatively low rates which are well below the average for the whole sample (21 per cent) while offences against the person, deception and breaking and entering have custody rates above average. However, the category of dangerous and offensive behaviour seems to have a unexpectedly high custody rate of 32 per cent which is well above the average. This can probably be explained by the inclusion in this category of not only relatively minor offences such as public order and breach of the peace but also of weapons offences and alcohol and drug related offences. In

fact, the high custody rate in this category may be explained by several cases which allegedly involved the supply of large quantities of drugs, in itself perceived to be a serious offence, which also involved conspiracy charges. Credence is given to this explanation by the results of a similar analysis of remand decisions by offence type carried out on the court registers where the custody rate for the category of dangerous and offensive behaviour is only slightly above the average for all offence types (13 per cent).

APPENDIX 11

Table A11.1 Respondents' perceptions of important factors in the remand decision.

	Very important	Unimportant
Offence related factors		
The type of offence	68%	2%
Whether the alleged offence involved violence	45%	13%
Alleged offence committed during hours of darkness	15%	30%
Who the victim was	33%	21%
Whether the defendant intends to plead guilty	8%	48%
Whether the defendant has committed an offence on bail	67%	27%
Whether there is property outstanding	26%	26%
Evidence		
The strength of the prosecution case	53%	18%
The strength of the defence case	36%	25%
The strength of the evidence	45%	18%
Evidence may interfere with witnesses	66%	4%
Court based factors		
The magistrates sitting	73%	2%
The defendant's demeanour	23%	42%
Defendant appearing in custody	20%	53%
Police bail/custody decision	28%	34%
The length of time until the conclusion of the case	17%	21%
Probable future sentence	30%	15%
Whether the C.P.S. object to bail	63%	8%

	Very important	Important
Previous bail/offending history		
Previous convictions of the defendant	58%	14%
Past custodial sentence	38%	32%
Failed to surrender in the past	60%	6%
Defendant's characteristics		
The gender of the defendant	19%	49%
The age of the defendant	28%	38%
The ethnic origin of the defendant	10%	77%
Defendant's circumstances		
Whether the defendant is in employment	25%	34%
Whether the defendant has a partner	2%	64%
Whether the defendant has children	6%	50%
Whether the defendant had relationship problems	0%	58%
Other family ties of the defendant	6%	60%
Medical problems	12%	19%
The education of the defendant	4%	76%
The defendants financial situation	4%	68%
Any drugs or alcohol problems	8%	27%
Surety available	51%	48%
Whether the defendant has a stable address	38%	6%

APPENDIX 12

THE PROBLEM OF BAIL BANDITS

New Law Journal, April 24 1992: 558-560

The problem with bail bandits

Anthea Hucklesby wonders whether the police research on bail bandits is correct

The package of measures recently announced by the Home Secretary to combat the problem of "bail bandits" can be seen as a largely ill thought-out response to persistent pressure from the police to tackle the problem of offending whilst on bail. The Home Secretary's proposals fall short of implementing, in full, the recommendations made by the police. Instead, he has sought to perform a delicate balancing act between, on the one hand, tackling the perceived problem of bail bandits and, on the other, adhering to the Government's policy of reducing the prison population (both the remand and convicted prison population) by the increased use of community alternatives. In trying to be all things to all people the Home Secretary has failed in both respects.

The Home Secretary proposed:

- new legislation to make offending whilst on bail an aggravating factor in determining sentencing;
- to undertake research to identify those defendants who are likely to re-offend on bail to facilitate targeting them for preventive measures—a remand in custody;
- to review magistrates' training in the application of the Bail Act 1976;
- to provide extra funding for bail hostel accommodation, Bail Information Schemes and similar projects;
- to improve the bail notices given to defendants to highlight the consequences of breaches of bail;
- to review police bail procedures;
- to introduce new legislation giving the police immediate powers of arrest for breach of police bail; and
- to introduce a system to monitor the problem.

Some of the proposals will be welcomed. The proposals to improve information gathering and to review the training of magistrates in the application of the 1976 Bail Act will allow a more informed remand decision to be made by the magistrates. Extra hostel accommodation should provide for more defendants to be remanded on bail. However, other proposals have provoked critical reaction.

The proposals follow the publication of two reports by separate police forces



on the incidence of offending whilst on bail.¹ On the strength of the findings of these reports, the police lobbied the Home Secretary to tackle the problem of bail bandits. Both studies indicated that the incidence of reoffending is between 23 per cent and 34 per cent of those on bail, and that this figure has increased over time. Moreover, the studies linked the increased incidence of offending whilst on bail with the growth in the overall crime rate. The authors argue that their figures suggested that it is a small minority of offenders who were responsible for a disproportionately large number of crimes, particularly burglary and auto crime (the crimes showing the largest increases in official crime figures). Therefore, they conclude that if these bail bandits can be dealt with, by a tightening up of the grant of bail, a substantial drop in the crime rate could be achieved.

As a result of pressure from the police, based on evidence from these studies, the Home Office announced that its research unit would conduct an investigation into the problem. The figures generated from this research contradict the findings of the police research. It found that the incidence of offending whilst on bail is between 10 and 17 per cent of those granted bail over the last five years.² These figures

have not increased significantly since 1978 when a similar survey was conducted, despite an increase in the number of defendants being granted bail. The dramatic difference between the statistics generated by the police reports and the Home Office study may be due to the different measure of offending on bail. The police studies utilised as a measure those arrested for an alleged offence whilst on bail. Clearly, their figures must be looked at with caution as they deal only with alleged offences which have not been, and may never be, proven in a court of law.

Consequently, these figures probably constitute an overestimate of the incidence of proven offending whilst on bail. In contrast, the Home Office research looked at the number of offenders who had actually been convicted of an offence committed whilst on bail. This is a much more accurate measure of the incidence of offending whilst on bail as it takes into account the defendant's proven guilt or innocence.

Further evidence throws doubt upon the police figures. A study being undertaken at the present time on bail in magistrates' courts in South Wales³ suggests that the incidence of offending whilst on bail that actually reaches a court hearing is much lower than the police figures would suggest.

The study involved a four-month period (April to July 1991) of observation in three South Wales magistrates' courts, in which 1,524 remand hearings were observed.

Three measures of offending whilst on bail can be derived from the data.

1. **Information given in court that the defendant had allegedly committed an offence on bail.** Any information that was given in court, from either the prosecution and defence solicitors or the defendant, relating to alleged offences other than those being dealt with during the observed hearing, for which the defendant was on

¹ *Avon and Somerset Constabulary (1991): The effect of reoffending on bail on crime in Avon and Somerset. Northumbria Police (1991): Bail and Multiple offending.*

² *J Ames: "Bail Bandits may be fewer than thought", The Law Society's Gazette, No 6,*

February 12, 1992.

³ *Home Office Statistical Bulletin (1981). Estimates of offending by those on bail, issue 22/81.*

⁴ *A Hucklesby (1992): Remand Decisions in Magistrates' Courts (unpublished).*

ail or in custody were recorded. In only 7.5 per cent of cases (114 cases) was this factor mentioned. Of these 87 per cent (100 cases) were on bail rather than in custody for another offence.

CPS objections to bail on the grounds that during the proceedings for the present offence(s) the defendant had allegedly committed an offence on bail.

It was recorded whether the CPS objected to bail explicitly on the grounds that the defendant had allegedly committed an offence on bail during the present proceedings. This was recorded in 5.6 per cent of cases (86 cases).

CPS objections to bail on the grounds that an offence had allegedly been committed on bail during past proceedings for other offences. It was recorded whether the CPS objected to a defendant's bail on the grounds that the defendant had during past proceedings committed an offence whilst on bail. This occurred in only 0.7 per cent of cases (11 cases).

These figures suggest the incidence of offending whilst on bail to be at the most 7.5 per cent, which is a substantially lower rate of reoffending on bail than those produced by the police.⁵ These results coupled with those obtained by the Home Office research seem to suggest that the figures produced by the police are an overestimate of the problem. It must also be pointed out that if these figures are correct, at least 90 per cent of those granted bail do not commit an offence on bail.

An analysis of the previous remand status of the defendant and the hearing that was observed also produces results that point in the direction of overestimation of the problem by the police. Of those defendants previously remanded on police bail, in no case was offending on bail mentioned. Of those previously remanded in police custody, offending whilst on bail was mentioned as a point of information in 30 per cent of cases. The CPS objected to bail on the ground that the defendant had committed current offences on bail in 8 per cent (39 cases) of cases where the defendant was previously held in police custody. In 8 per cent (11 cases) of cases, the CPS objected to bail on the ground that the defendant had previously committed offences on bail.

These figures on police bail/custody decisions are interesting in the light of the arguments put forward by the police that they do not have the powers under PACE to hold a defendant in police custody solely because they have

committed an offence on bail. Moreover, the police have been asking for an increase in their powers under PACE to allow them to detain a defendant in police custody on the grounds that there are substantial grounds to believe that the defendant will commit a further offence if granted bail—the commission

"What constitutes the aggravating factor of an offence committed on bail? Will all offences committed on bail be included or just those that involve serious offences or offences of a similar nature to the offence for which a defendant was originally charged?"

of an alleged offence on bail is, in practice, seen as a substantial reason for believing that a defendant will commit further offences if granted bail. (This would bring police powers under PACE in line with magistrates powers under the Bail Act 1976.) However, these figures suggest that the police do detain defendants in police custody who have committed an offence on bail whether or not it is explicitly for this reason. Moreover, the data suggest that those defendants remanded in police custody are far more likely to be remanded in custody by the magistrates. In other words, defendants who allegedly commit offences whilst on bail are, even under existing provisions, more likely to be remanded in custody.

Of those defendants remanded on unconditional bail at their last hearing, it was not mentioned during any of the hearings that offences had been committed on bail. Of those remanded on conditional bail, 4 per cent (8 cases) had other offences committed while on bail mentioned as a point of information during the hearing. In only 2 per cent (4 cases) of cases where defendants were remanded on conditional bail did the CPS object to bail on the ground that an offence had allegedly been committed on bail. These figures support

the previous findings which suggest that very few defendants who commit an offence on bail are subsequently granted bail either by the police or by the courts. Furthermore, they suggest that few defendants commit offences on bail during proceedings, otherwise the CPS would be objecting to bail in a far larger number of cases at subsequent hearings.

The South Wales data suggest that the magistrates already take an offence being committed on bail as a sufficient, if not necessary reason for a remand in custody. In 70 per cent of cases where the CPS objected to bail due to an offence allegedly being committed on bail (84 cases) the defendant was remanded in custody. In only one of these cases was the defendant remanded on unconditional bail.

The police have asserted that the courts are taking little notice of police objections to bail on the ground that an offence has allegedly been committed on bail. However, the data seems to contradict this assertion, showing that in the overwhelming number of cases the magistrates follow the CPS request, as far as the remand status of the defendant is concerned. This indicates that urging magistrates (by whatever means) to take more notice of CPS objections will actually make little, if any, difference to the overall outcome of remand hearings. Taken to its logical conclusion, if magistrates invariably follow the CPS request as to the remand status of the defendant, the important decision is the one taken by the CPS.

That the authorities are aware of this is indicated by the fact that, when Bail Information Schemes were established it was decided, contrary to expert advice, that the information collected should go to the CPS rather than to the magistrates. This strengthens the point that, if any stage in the process needs to be tackled, it is the CPS decision as to whether or not to object to bail and on what grounds. This decision is guided by whether the police object to bail and on what grounds, as well as by information from the Bail Information Scheme (where applicable) on the defendants community ties. Nevertheless, the ultimate decision lies with the CPS as the independent prosecution agency, which means that other agencies including the Home Secretary and the police have little or no legal power to influence this decision.

Having said this, research in this area is needed to uncover the reality of

⁵ However, the findings are preliminary and have to be treated with some measure of caution as the incidence of offending on bail was only recorded when it was mentioned as a specific issue in the court proceedings. It may, therefore, be that this method of data collection only highlights the fact that very little information concerning alleged offences committed whilst on bail is actually divulged to the magistrates in open court.

the decision-making process. As already shown, the police assert that the magistrates are not taking enough notice of their objections to bail; however, evidence suggests that the magistrates invariably follow CPS objections. This seems to suggest that the problem, as perceived by the police, lies with the CPS. Nevertheless, whether this is in fact the case cannot be established at the present time. What is clearly needed is research into the CPS' use of police recommendations.

The ultimate sanction for committing an offence on bail is, of course, a remand in custody. The Home Secretary proposes to make defendants more aware of this possibility by improving bail notices to warn of the consequences of breaching bail. Whether this will have the desired deterrent effect is debatable. It is more likely to have the effect of more defendants being remanded in custody as the magistrates and the CPS will take the view that a defendant is well aware of the consequences of his/her alleged actions. This is likely to result in an increase in both the remand population of prison establishments and in the number of defendants being held in police cells, a situation which would seriously undermine the Government's declared commitment to reducing the remand population in the prison establishments and police cells.

The police also pressed for a specific offence of committing an offence whilst on bail. This call was in response to the notion that the defendant commits offences on bail because he believes that he has nothing to lose as any sentence will not be materially altered due to the additional offences being committed. However, the Home Secretary rejected the idea on legal advice as, in practice, it would mean the defendant being sentenced twice for the same offence (first for the substantive offence(s) and secondly for committing an offence while on bail for that offence—two sentences for only one substantive offence). Nevertheless, the Home Secretary did announce that new legislation would be brought in to allow the fact that an offence had been committed on bail to be taken into consideration as an aggravating factor at the sentencing stage of the proceedings. How, or even whether, this can be achieved under the Criminal Justice Act 1991 is not as yet clear. The Act in its present form only allows aggravating factors to be taken into consideration for sentencing if they are related to the circumstances of the offence (s 3(3)).

Although s 28 allows mitigating circumstances to be taken into consideration that have no direct bearing on the circumstances of the offence, it does not provide for aggravating factors in the same way. Thus, the Home Secretary appears to have two options:

"The police assert that the magistrates are not taking enough notice of their objections to bail; however, evidence suggests that the magistrates invariably follow CPS objections. This seems to suggest that the problem, as perceived by the police, lies with the CPS."

either to amend s 28 to include aggravating as well as mitigating circumstances, or to widen the definition of aggravating factors under s 3(3) to include the commission of an offence on bail.

What also has to be addressed is what constitutes the aggravating factor of an offence committed on bail. Will all offences committed on bail be included or just those that involve serious offences or offences of a similar nature to the offence for which a defendant was originally charged? It is important here to look at the reasons for the proposals. If the issue is that by committing an offence on bail a defendant has breached society's trust then all offences committed on bail should be treated in the same manner whatever the offence. However, if the proposals are motivated by a desire to reduce the amount of crime committed on bail by targeting those defendants who pose the most risk, in the sense of their re-offending rate, then those who perpetually re-offend on bail should be targeted.

This issue needs to be resolved, because targeting those offenders identified by the police as persistent "bail bandits" for increases in sentences, as a deterrent to further offending on bail, may have the net widening effect of including others for which the measures were not intended. Stringent guidelines will have to be drawn up as to what constitutes the aggravating factor of offending whilst on bail if an increase in the prison population is to be avoided (a result which, as already indicated above, would be contrary to the Government's intentions, as declared in the Criminal Justice Act 1991).

The Home Secretary's proposals are

a reply to police assertions that the incidence of offending whilst on bail is a substantial and growing problem. Both the Home Office research and the South Wales research fundamentally challenge the findings of the police reports. Both studies indicate that the police figure of a re-offending rate of between 23 per cent and 34 per cent is an overestimate and that the true figure is around 10 per cent. This indicates that at least 90 per cent of those defendants currently being granted bail do not commit further offences whilst on bail. Whatever the true incidence of the problem, if implemented, the Home Secretary's proposals are likely to result in more defendants being remanded in custody.

The police have asserted that the incidence of offending whilst on bail is increasing and have focused their attention on its relationship with the rising crime rate, especially for property crimes. However, it may be more appropriate to look for a relationship between long-term trends in offending whilst on bail and the time taken for a case to be completed. Delays in court proceedings have been causing concern for a substantial period of time. However, attention has rightly been directed towards those remanded in custody (as seen by the imposition of custody time limits). Nevertheless, it is inevitable that the longer defendants are on bail, the more likely they are to commit a fresh offence. Therefore, if the number of defendants affected by the delays increases or if the length of those delays increase, then it is likely that the number of defendants who commit offences whilst on bail will increase along with the number of alleged offences committed whilst on bail by any one defendant. Furthermore, the likelihood that two offences have actually been perpetrated, say, six months apart (which may for a persistent offender be regarded as a relatively successful period of not offending) is also increased. From this perspective, it could be argued that the criminal justice system itself has contributed to the problem of bail bandits through the inefficiencies and delays that operate within the system. The consequences to the individual of these delays may be twofold. He may be remanded in custody because he has allegedly committed an offence on bail and he may receive a harsher sentence, under the Home Secretary's proposals. The bail bandit, then, should perhaps be seen as a victim of the inefficiencies of the criminal justice system.

APPENDIX 13

UNNECESSARY LEGISLATIVE CHANGE

New Law Journal, 19th February 1993: 233,234,255

Unnecessary legislative changes

Anthea Hucklesby has doubts about the wisdom of the Bail (Amendment) Bill

Almost a year to the day after the Home Secretary's announcement of changes to the law on bail to tackle the problem of offending on bail, the Bail (Amendment) Bill is to have its second reading.¹

The Bill, sponsored by the Conservative MP for Shoreham, Michael Stephen, tackles the problem of offending on bail. The MP claims that he has received "a great deal of support from both Conservative and Labour MPs, although neither the Government or the Labour Party have officially said anything about it. I think it's in line with what the Government is trying to do. I mean, I haven't yet had anybody say they wouldn't support it."² Even if the Bill does not become law, it is likely to encourage further attempts at legislative change. This is regrettable, because what is needed is not a change in the law but a review and subsequent revision of its practical operation.

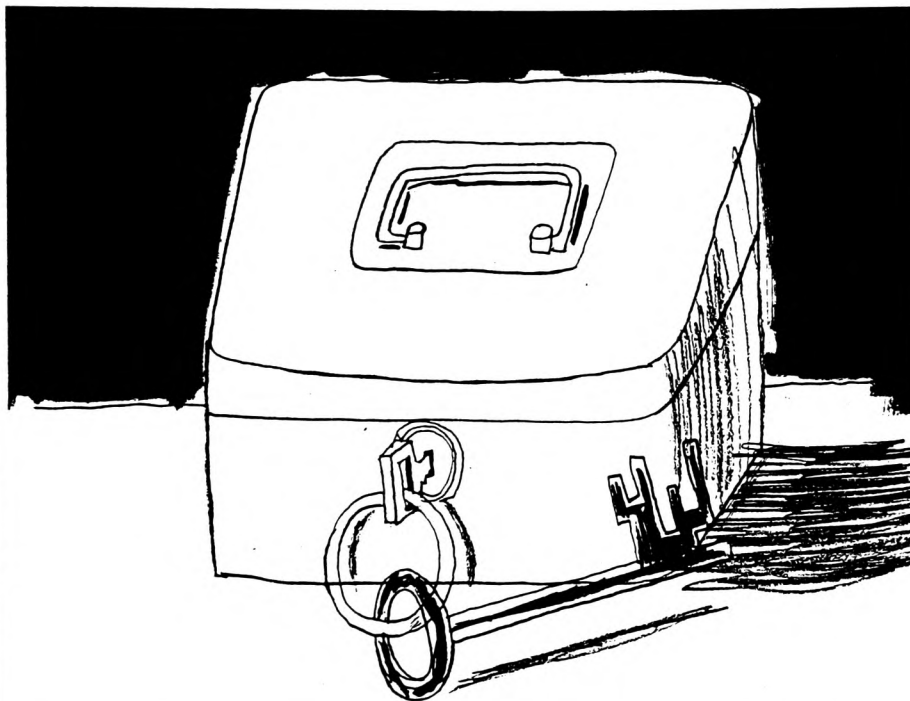
The Bill would make two changes to existing bail legislation.

It would confer on the prosecution the right to appeal against magistrates' decisions to grant bail in certain circumstances: the prosecution must have objected to bail during the remand hearing in the magistrates' court; and the defendant must have been charged with an offence for which the maximum sentence is five years' or more imprisonment.

It would overturn the presumption of bail for those offenders charged with offences carrying a maximum sentence of five or more years and who have previously been convicted of any offence punishable by imprisonment committed whilst on bail in the last ten years.

Prosecution's right to appeal

The prosecution would have the right to appeal to a High Court or Crown Court judge—in the form of a re-hearing. Presumably, this will resemble the present system, which entitles the defendant to appeal to a judge in chambers against a decision to remand him in custody. This is another clear movement in favour of the prosecution—the 1988 Criminal Justice Act already gives the prosecution the right to appeal



Toby Morison

against lenient sentences.³

Pending the appeal against the bail decision—which must take place within five days of the initial hearing—the Bill proposes that the defendant be remanded in custody, even though the decision of the court was to remand him on bail. This is contrary to the notion of "due process" operating at the pre-trial stage, which emphasises the presumption of "innocence until proven guilty". In all other instances, whether pre-trial, in relation to defendants' appeals to a judge in chambers, or after sentence, the decision of the court

stands until the appeal has been heard and decided.

If the magistrates have released a defendant on bail, then surely the prosecution has not provided sufficient reason(s) under Sch 1 Part 1 of the Bail Act 1976 for the court to overturn the presumption of bail and remand the defendant in custody. The result, then, is that the prosecution is able to overturn the presumption of bail for all defendants charged with offences under clause 1.1 of the Bill⁴ for an initial period of five days without having to prove that any of the exceptions to the

¹ Second reading today, February 19. The Home Secretary proposed changes to the law on bail as follows:

1) New legislation to make offending whilst on bail an aggravating factor in determining sentence; 2) to introduce new legislation giving the police immediate powers of arrest for breach of police bail. Although these were not his only proposals, the remainder did not involve legislative changes. For full commentary see "The problem with bail bandits" by A Hucklesby in NLJ vol 142, no 6549, pp 558-560.

² Solicitors Journal, vol 136, no 45, November 1992, p 1180.

³ Under s 36 of the Criminal Justice Act 1988, the Attorney General, at the prosecution's request, now has the right of appeal against such sentences.

⁴ Clause 1.1 states: "In proceedings before a magistrates' court in which a person who is charged with an offence punishable by a term of imprisonment of five years or more is granted bail there shall be a right of appeal by the prosecution to a judge of the High Court or Crown Court against the decision of the magistrates' court to grant bail, provided objection to the granting of bail is made by the prosecution before the magistrates' court grants such bail."

Bail Act (1976) applies.

The Bill undermines the power of magistrates (both lay and stipendiary) to make the ultimate remand decision and shifts it to the prosecution. Furthermore, anything that the defence puts forward either about the facts of the case or the defendant's circumstances is irrelevant for that particular hearing. Is this, then, a valid bail application for the purposes of s 154 of the Criminal Justice Act 1988, which limits the number of such applications to two without fresh circumstances coming to light?

Even if the right of appeal for the prosecution was thought to be desirable, the results of my research⁵ on the remand process suggest that this right of appeal against magistrates' bail decisions may be of little practical use. In the vast majority of cases, magistrates follow the Crown Prosecution Service remand request: in 85 per cent of cases where the CPS requested that the defendant be remanded in custody, the magistrates acceded to that request.

The figure is even higher when the CPS requested conditional bail: in 98 per cent of such cases, the defendants were remanded on conditional bail with a further one per cent remanded in custody. In other words, the "real" decision-making on bail is exercised, not by the magistrates, but by the CPS. It follows—as I have argued before⁶—that if reform is necessary, it should be directed at the CPS decision-making process, not that of the magistrates.

No research has been conducted on the reasons why magistrates invariably follow CPS recommendations, but my initial research findings suggest that it may be because they perceive the CPS as the source of true and relevant facts and circumstances whilst believing that the defence advocates relay information from their clients whom they perceive as a dubious source of income.

What is particularly worrying about these findings is that, if the proposed Bill reaches the statute book, it may result in magistrates remanding a defendant in custody in every case where the CPS objects to a defendant's bail, even if they are minded to grant bail. This is because the magistrates might believe that an appeal by the CPS would cause distress to the defendant and give rise to further costs.

Furthermore, the research suggests that, at present, the CPS select cases from a hierarchy—ranging from those they definitely want remanded in cus-

tody to those that they are satisfied can be granted unconditional bail—and only apply for remand in custody in the small number of cases at the top of that hierarchy, not in all the cases where they believe that a remand in custody is appropriate. The CPS seem to base this practice on the belief, whether correct or not, that magistrates are more minded to remand defendants in custody if they see that the CPS have made some effort to select the more serious cases and declined to make applications for remands in cases where the magistrates would be minded to grant bail. Currently, the CPS only make an application when they believe it is of paramount importance that the defendant be remanded in custody. The right of appeal for the prosecution thus may mean that the number of applications made by the CPS for remands in custody may increase due to the fact that, even if their application is refused, the defendant can be remanded in custody, awaiting appeal, for at least five days.

In short, the right of appeal against magistrates' bail decisions will result in an increase in the number of defendants who are remanded in custody as well as giving the ultimate power to remand a defendant in custody.

It can be assumed that the benchmark of an offence punishable by a term of imprisonment of five years or more is an attempt to define a serious offence and it must be assumed that this particular definition has been chosen for compatibility with one of the definitions of an "arrestable offence" under s 24.1 of PACE 1984. It is my view that this benchmark has the potential to produce widespread abuse of the system. The definition of serious offence is a contentious issue in itself, but what is particularly worrying about this definition is that it includes of-

fences which are unlikely to be deemed particularly serious, are unlikely to result in a custodial sentence if the person is convicted or where the maximum sentence is hardly ever imposed in practice.⁷

A particular stark example is theft under s 1(1) of the Theft Act (1968) for which the maximum sentence on indictment was reduced by s 26 of the Criminal Justice Act (1991) to seven years' imprisonment. As Wasik and Taylor (1991) point out,

"this change is almost entirely symbolic, given that sentence levels for theft ... never approach ... the revised level."⁸

Furthermore, there is no distinction made, under the Theft Act 1968, between thefts that involve only small material gain such as theft of a packet of bacon and those that involve substantial material gain. Yet, because the maximum sentence for all thefts is seven years' imprisonment, a case involving a relatively trivial theft will nevertheless come within the Bill's provisions.

Another consequence of the emphasis placed on offences punishable by a term of five years or over, is that when the police and/or the CPS want a defendant to be kept in custody for as long as possible, they may well be tempted to "overcharge" the defendant, so making sure that he is charged with an offence which enables the appeals procedure to operate. The charge can always be reduced or discharged at a later stage of the proceedings. In the meantime the decision on bail has been taken out of the hands of the magistrates.

Overtaking the presumption of bail

Clause 2 of the Bill provides for a presumption of custody for those defendants who are charged with an offence for which the maximum sentence is at least five years' imprisonment and who, in the last 10 years, have been convicted of an offence, punishable by imprisonment, which they committed whilst on bail. The first point to note here is that all but the most minor of criminal offences are punishable by imprisonment. This clause will therefore cover virtually all defendants who, in the last ten years, have committed an offence whilst on bail and who are subsequently charged with (though not yet, if ever, convicted of) an offence punishable by a term of five years or more.

continued on p 255

⁵ *A Huckleby Remand Decisions in Magistrates' Courts. This is a three-year research project, now in its final stages, on the practical operation of the law on bail in South Wales. These results are derived from a four-month period of observation in South Wales magistrates' courts in which 1,524 remand hearings were observed.*

⁶ *A Huckleby (1992) op cit.*

⁷ *See R Cross (1981) The English Sentencing System, Butterworths, London, on the notion of a tariff.*

⁸ *Wasik M and R Taylor (1991) Blackstone's Guide to the Criminal Justice Act 1991, Blackstones, London, p 10.*

continued from p234

his provision seems to be contrary to the aims of the Criminal Justice Act 1991 which promotes the idea that previous convictions should not be taken into consideration for sentencing purposes.

Therefore, while previous convictions of a defendant are of paramount importance pre-trial, they have to be all but ignored for sentencing purposes. The effect of the Bill for the defendant to punish him—by a remand in custody—for an offence for which he has already been convicted and punished, perhaps as long as 10 years before.

There are also practical difficulties: records of previous convictions do not presently indicate whether an offence was committed by the defendant when on bail. Even if the offence could be shown to have been committed whilst on bail, several issues would have to be resolved: Would the proviso only be effective if the defendant was convicted both the original offence and the offence alleged to have been committed on bail subject to the previous proceedings? Practically, if the defendant had only been convicted, during those previous proceedings, of either the original offence for which he was on bail or the offence he allegedly committed on bail, the fact that he allegedly committed an offence on bail would not be a point of record.

Furthermore, records of previous convictions do not give any indication of the circumstances of the case, so that, at best, there may be information pertinent to the present case, about the previous case(s) that the court will not be aware of.

There is a further reason to suggest that the Bill is unnecessary. Under s 13 of the Criminal Justice Act 1988 for certain specified offences, namely murder, manslaughter, rape, attempted murder or attempted rape where the court grants bail, despite prosecutions and convictions, then the reasons for that decision must be recorded. Although this provision falls short of reversing the presumption of bail, in practice its effect is the same. This provision was a response to perceived public concern over a number of cases where defendants had been released on bail and allegedly committed further serious offences.⁹

Michael Stephen himself cites a case in Gloucester in 1992 when a woman was raped and murdered allegedly by a man who was on bail for another alleged rape¹⁰ as an example to illustrate

the need for this new legislation. However, this case is plainly covered by s 153 where the presumption of bail has already, in practice, been withdrawn. If this is indeed the sort of case that Mr Stephen is concerned to avoid, the present law already provides an adequate safeguard.

I conducted a series of interviews with professionals involved in the remand process. Out of 55 respondents, only three believed that the law should be changed to overturn the presumption of bail because of the serious nature of the offence.

If the rationale behind the Bill is to deal with cases, such as those highlighted by Police research on offending whilst on bail,¹¹ which mainly concerned property crime, such as burglary, thefts of cars and from cars and "joyriding", I would suggest that the present provisions under the Bail Act 1976 are sufficient to allow those defendants charged with multiple offences, of a serious nature, to be remanded in custody.

Professionals involved in the remand process suggest that they see offending on bail as a real problem (of 55 respondents, 85 per cent saw offending on bail as a problem) but of the 33 respondents who put forward a solution to that problem only 13 (40 per cent)—24 per cent of the whole sample—stated that a remand in custody was a solution, with 10 pin-pointing it as the only solution.

However, 26 (48 per cent) of the sample believed that the law was adequate, although 14 (54 per cent) of these expressed concern over the way the Bail Act 1976 is applied in practice. Of those who said that the law on bail is inadequate (24 respondents—45 per cent), nine gave the problem of offending on bail as the reason for this, it was also the reason why they wanted a change in the law.

Moreover, some respondents indicated that they had reservations about

the emphasis on offending on bail, because what they perceived as important issues; such as the seriousness of the offences and whether the offences allegedly committed were of a like nature, were being lost under the broad banner of "offending on bail".

It does seem somewhat perverse to treat a defendant who has allegedly committed relatively minor shop lifting offences on bail in the same way as a defendant who has allegedly committed burglaries of domestic dwellings. My own research suggests that although the majority of professionals involved in the process see offending on bail as a real problem, the majority, even if they see the present law on bail as inadequate and believe it should be reformed, do not believe that the way to tackle offending on bail is to change the law. Indeed, a substantial minority of the sample suggest that the practical operation of the law on bail is more problematic.

Confused and complicated

If this Bill is enacted, coupled with the changes announced by the Home Secretary last year (see *NLJ*, April 24, 1992, p 558-60), the law on bail will become confused and complicated with so many provisos and exceptions to the presumption of bail.

The provision under the Bail (Amendment) Bill, of the right to appeal for the prosecution, is open to abuse and the overturning of the presumption of bail for those convicted of offending on bail is unworkable. Furthermore, the delays and the economic costs to the criminal justice system will increase because of the extra work involved in the appeals procedure for the prosecution, the defence and the judge.

At a time when the Government is looking elsewhere in the criminal justice system for savings (not least in legal aid) I suggest that it will not be money well spent. In addition, the research being carried out at present in South Wales suggests that, overall, the professional bodies who work within the present system are satisfied with the present law and what needs to be tackled is its application.

What is needed is further research into the practical operation of the law, not more tinkering with the system prior to such research. o

⁹ One of these cases was that of Winston Silcott, who was on bail for another alleged murder when he was arrested for the murder of PC Blakelock during the Broadwater Farm riots. His subsequent conviction for the murder of PC Blakelock was quashed on appeal.

¹⁰ Solicitors Journal (1992) *op cit*.

¹¹ Avon and Somerset Constabulary (1991) The Effect of reoffending on bail on crime in Avon and Somerset. Northumbria Police (1991) *Bail and Multiple offending*.

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APPENDIX 14

THE USE AND ABUSE OF CONDITIONAL BAIL

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The Use and Abuse of Conditional Bail

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Abstract: Conditional bail was introduced to decrease the number of defendants remanded in custody. For this reason it has largely been ignored by researchers as any criticism of the operation of conditional bail may result in an increase in the numbers remanded in custody. However, research carried out in South Wales has highlighted some problems with its use, most notably its inconsistent and, arguably, excessive use.

Since the 1960s there has been a consistent attempt by successive governments to reduce the number of defendants remanded in custody. Two reasons may be cited for this constant pressure to increase the number of defendants granted bail: firstly, there has been concern for the rights of defendants awaiting trial and secondly, concern has been expressed over the increasing prison remand population.

Concern for the rights of defendants awaiting trial mounted when several studies in the early 1970s concluded that some defendants were unnecessarily remanded in custody, when they could safely be granted bail (Bottomley 1970; King 1971; Bottoms and McClean 1976). This meant that untried defendants who were legally innocent were being sent to prison when they could safely be granted bail. Furthermore, evidence from these studies suggested that a high proportion of defendants who had been remanded in custody prior to trial were subsequently acquitted or received non-custodial sentences. Moreover, defendants remanded in custody had less opportunity to prepare their cases and were more likely to plead guilty and receive a custodial sentence than a defendant granted bail (see Bottomley 1970; King 1971). Although the proportion of defendants granted bail has increased dramatically since the studies were conducted, with only approximately 10% of these remanded by the courts now being remanded in custody (Home Office 1993), criticism of the process has not diminished. Similar studies conducted in the 1980s have concentrated on the decision making process and have been critical of the lack of information at hearings, the speed with which decisions are made, and of the criteria on which remand decisions are made (East and Doherty 1984; Doherty and East 1985; Jones 1985). In addition, inconsistencies have been found in the remand decisions made by

magistrates (Jones 1985). Moreover, a high proportion of defendants remanded in custody prior to trial are still acquitted or receive non-custodial penalties: in 1992, it was estimated that of those remanded in custody, 39% received non-custodial sentences while 21% were acquitted (Home Office 1993).

There has been a relentless rise in the prison remand population, despite a steady decline in the proportion of defendants remanded in custody since the introduction of the Bail Act 1976 with its statutory presumption of bail. During the 1980s and early 1990s the number of defendants remanded in custody by the magistrates' courts rose from 42,000 in 1980 to 49,000 in 1992 (Home Office 1981, 1993). During the same period the average daily population of remand prisoners increased from 6,438 in 1980 to 9,707 in 1992 after reaching a peak of 10,933 in 1988. As a consequence, over a fifth of the prison population is made up of remand prisoners¹. This increase was due to two factors: the increase in the number of receptions of remand prisoners into prison establishments and the increasing length of time prisoners spent awaiting trial. Although, pressure was brought to bear to reduce the prison remand population for reasons of justice and humanity (the conditions in which remand prisoners were held being some of the worst in the prison system) one of the most important, if not the major reason for such pressure, was that of the economic cost: the cost of remanding a defendant in custody far outweighs the cost of granting a defendant bail.

These pressures have resulted in a constant drive to increase the number of defendants granted bail. The ability of magistrates to attach conditions to bail, the increase in the number of bail hostel places and the introduction and expansion of bail information schemes are some examples of measures that have been introduced to attain this objective. Although, attainment of this objective has been an important agent of change in the remand process, it has always been tempered by the need to protect the public from defendants who are awaiting trial².

Provision for the imposition of conditions of bail is an attempt to fulfil the twin aims of permitting the largest possible number of defendants to be granted bail while still protecting the public. They provide restrictions on a person's liberty that should, in theory, help to prevent breaches of bail. However, concerns about the effectiveness of conditions coupled with the drive to reduce the prison remand population have resulted in attempts to toughen up conditional bail through the use of stricter conditions and better monitoring and enforcement. Electronic monitoring or 'tagging' of defendants on bail is one such proposal³.

The government set up three experimental schemes in 1989 to examine the effectiveness of 'tagging'. The experimental schemes were in Nottingham, North Tyneside and Tower Bridge and were to run for six months (see Miller 1989; Lilly 1990; Nellis 1991). Defendants who would otherwise be remanded in custody were to be released on bail with a condition requiring the defendant to stay at home for a given period on the understanding that they would be electronically monitored to ensure their compliance. The government claimed the schemes to be a success.

disagreed. Although the Home Office had originally hoped that 150 defendants would be tagged, in the event only 50 defendants were monitored. The failure rate was very high with 28 out of the 50 'tagged' defendants breaching their bail conditions, committing further offences on bail or absconding (Morton 1990). There were also technical difficulties with the equipment. One of the major concerns of those critical of 'tagging' was that it might be used not as an alternative to a remand in custody (Avery 1989) but as an alternative to other non-custodial options – either unconditional bail or conditional bail with other requirements – resulting in a process of 'net-widening'. Frost and Stephenson's (1989) simulation of electronic tagging seems to support this concern:

tagging was, . . . , favoured as an alternative to bail or remand, its introduction having the effect of detracting from the use of whichever was the most favoured option in each case. (p. 91)

In other words, it was used not only as an alternative to a remand in custody but also to unconditional bail and bail with other requirements. However, others have argued that this concern is ill-founded as anything is better than being remanded to prison. Nevertheless, the more numerous and restrictive the conditions which are attached to bail the greater the risk of defendants breaching bail, which may ultimately result in an increase in the prison remand population rather than a reduction. Of course, any method of better enforcement of conditions may have a similar result. Although the government planned further experimental schemes, to date (January 1994) they have not materialised. However, it is unlikely that the last has been seen of this controversial proposal.

Legal Background

Bail with conditions can be imposed only when the presumption of unconditional bail has been rebutted. Conditions are attached to bail to restrict the liberty of the defendant, while still in the community, in order to provide additional safeguards against the defendant's breaching bail. The power to attach conditions to bail was introduced under the Criminal Justice Act 1967 (s. 21) with the explicit intention of reducing the number of defendants remanded in custody. The power was later enshrined in s. 3(6) of the Bail Act 1976 which provides that a court can require a defendant, before release on bail or later, to comply with such conditions as appears to the court to be necessary to ensure that:

- (i) s/he surrenders to custody;
- (ii) s/he does not commit an offence on bail;
- (iii) s/he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to him/herself or any other person;
- (iv) s/he makes him/herself available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with him/her for the offence.

therefore conditions can be of an almost infinite variety. In practice, the courts tend to impose conditions drawn from a limited collection which includes, *inter alia*, a residence requirement, reporting to a police station at specified times and a curfew. Although there are separate provisions under the Act for the imposition of sureties and securities, these provisions are often included under the term conditions of bail.

If a defendant breaks any of the conditions on his/her bail, s/he is not guilty of a criminal offence. However, a person released on bail may be arrested without a warrant by a constable if the constable has reasonable grounds for believing that the person has broken or is likely to break any condition imposed on his/her bail (Bail Act 1976, s. 7(3) (b)). A defendant arrested under these provisions must be brought back to court where s/he may be remanded in custody or granted bail with the same or different conditions (Bail Act 1976, Sch. 1, Pt. 1, para. 6).

The Use of Conditional Bail

Since the power to attach conditions to bail was introduced in 1967, research has shown that their use has steadily increased⁴. In 1967, a study by Simon and Weatheritt (1974) found that 8% of defendants in their sample had requirements attached to their bail. By 1971, according to King (1971), the figure had increased to 15% of remanded defendants. After the enactment of the Bail Act in 1978 the figure continued to increase: Zander's (1979) study of London magistrates' courts found one-third of defendants were subject to conditions of bail and a 1984 study (East and Doherty 1984) put the figure at 38%.

Despite the steady increase in the number of defendants subject to bail with conditions, it has all but been ignored by researchers with most research on, and criticism of, the remand system being focussed upon the plight of those remanded in custody. The limited research on conditional bail, to date, is a consequence of the emphasis on its role as a means of increasing the proportion of defendants granted bail and as one solution to the ever increasing remand population. This is also reflected at an individual case level where defence solicitors often propose a large number of conditions, which may or may not be relevant to the grounds for objecting to bail, in the hope of persuading the magistrates to grant bail rather than remanding the defendant in custody.

To focus on the issue of conditional bail is not to detract from its important role, when used properly, as an alternative to a remand in custody. Furthermore, allowing defendants to await trial in the community permits them to lead as normal a life as possible by maintaining their employment, accommodation and relationships. It is also a much cheaper option as defendants remain financially independent. However, the substantial number of defendants subject to conditional bail makes it an important area for research and a number of other factors contribute to this importance. Firstly, conditional bail, by its very nature, restricts the liberty of an unconvicted person by placing requirements deemed

appropriate by the court on that particular occasion. Secondly, the delays which occur in the criminal process mean that many defendants are subject to these requirements for a substantial period of time. Thirdly, some of the conditions that are imposed, for example the condition 'to keep out of the city centre', would seem unjustly punitive if they were part of sentence. A contradiction, therefore, exists between pre- and post-conviction philosophy.

Methodology

The research project (Hucklesby 1994) on the practical operation of the law on bail in magistrates' courts was conducted over a three year period (1990 to 1993). Three magistrates' courts were studied in the South Wales area and are referred to as Courts A, B and C. The courts were chosen for the study because they had a relatively large throughput of defendants and provided different geographical, social and economic environments as well as a range of branches, areas and petty sessional divisions of the agencies involved (for example, two police forces). The results used in this article are derived from two sources. Firstly, a four month period of observation in the three magistrates' courts (April to July 1991) and secondly, 60 interviews with participants in the process (magistrates, CPS, police, defence advocates, court clerks and probation officers) were undertaken. During the observation period two days per week were spent in Court A and one day a week in both Courts B and C. Details of every remand hearing in the main remand courtroom were collected for each court. 1,524 remand hearings were observed during this period. However, 429 defendants failed to appear thus reducing the sample size for those present at their hearing to 1,095. Fifty-seven per cent of the sample was from Court A (626 cases), 23% of cases (249) from Court B and 20% (220 cases) from Court C.

The agency personnel who were interviewed covered all of the agencies involved in the process as well as encompassing personnel from the different areas and branches of the agencies that covered the courts studied during the observations. Participants were asked to complete a questionnaire prior to the interview, which aimed to provide an overall impression of the practical operation of the remand process and to give some indication of the various participants' opinions on how the process worked and, if appropriate, how it could be improved. The interviews themselves were semi-structured. The participants were asked questions relating to the remand process in general but also in relation to their own and their agency's role in the process and addressed any issues that were identified by the participants as particularly important to themselves or their agency.

Research Findings

The research carried out in the three South Wales magistrates' courts suggests that the steady increase in the use of conditions of bail since their

were present at their court hearing being granted bail subject to conditions. This compares to 44% who were granted unconditional bail and 21% who were remanded in custody. The conditional bail rate is slightly lower than that found by East and Doherty (1984). Nevertheless, this means that over a third of defendants who are remanded by magistrates' courts are subject to some kind of restriction on their liberty, albeit in the community, during the proceedings against them. The study also suggests that there is a disparity in the use of conditions of bail between courts. Of the three courts studied, Court B granted the highest proportion of defendants' bail with conditions, 41%, and the figures for Courts C and A being 27% and 34% respectively. This suggests that conditions may be used differently by different courts. Furthermore, when an analysis of the number of conditions attached to bail in each individual case was undertaken a further disparity was found between the courts.

Of the 1,524 defendants in the observation sample who appeared at their hearing, 375 were granted conditional bail (no data on the actual number and type of conditions imposed was available for seven defendants leaving a sample size of 368). A total of 855 conditions was imposed on the 368 defendants remaining in the sample, which means that an average of 2.4 conditions was attached to each defendant's bail. However, as *Table 1* clearly shows this hides a large disparity in the number of conditions attached to each defendant's bail between the three courts.

Table 1 shows that the majority of defendants were granted conditional bail with one or two requirements attached to their bail. In fact, 62% of

TABLE 1
*A Comparison of the Number of Conditions Attached to Bail by Each Court
(As a percentage of those granted conditional bail)*

Number of conditions	Number of Defendants				
	Total no. of defendants	As % of total no. of conditions	Court		
			A (as a percentage of those granted conditional bail in each court)	B	C
1	108	13	19	4	15
2	119	28	38	5	41
3	77	27	31	22	25
4	44	21	10	35	20
5	18	11	2	25	—
6	2	1	—	4	—
Total	368	855	411	322	122

attached to their bail. However, the figures in *Table 1* show that in Court B only 9% of defendants granted conditional bail had one or two conditions attached to their bail, a much lower figure than the average for the three courts and for Courts A and C (58% and 56% respectively). However, Court B attached a greater number of conditions to a defendant's bail than the other two courts. For example, 64% of defendants who were granted conditional bail in Court B had four or more conditions attached to their bail while in Court A only 12% came into this category. It seems, then, that the number of conditions attached to a defendant's bail depends on the court in which s/he is appearing. Furthermore, the differences in proportional use of conditional bail compared to unconditional bail or remands in custody indicate that whether or not a defendant is granted conditional bail at all also depends on the court in which s/he is appearing. Court B, for example, not only remands a higher proportion of defendants on conditional bail (see figures above) so that, defendants are more likely to be granted bail with conditions but the number of conditions imposed on each defendant is likely to be greater.⁵

These figures suggest that courts are using conditional bail differently which itself suggests inconsistent and perhaps, in some courts, excessive use of conditions. Such excessive use can happen in two ways. Firstly, in some cases conditional bail is granted when unconditional bail would be adequate resulting in a process of 'net widening' and secondly, the number of restrictions (that is, the number of different conditions) placed on an individual defendant may be unnecessary and/or have no relevance to the grounds of objection to bail. These issues are particularly pertinent when it is acknowledged that many of the conditions which are attached to bail are, in fact, unenforceable. For example, the police often lack the resources to check that every defendant subject to a curfew is in at the appointed time. Furthermore, many conditions do not achieve the required objective. For example, reporting to the police does not necessarily achieve its aim of preventing absconding, as a defendant might report to a police station at the appointed time only to be on the next train out of the area.

Another point of interest is the nature of the specific conditions actually imposed. In the observation sample the condition most commonly imposed was residence, with 80% of defendants granted conditional bail being required to live at a specific address. Reporting to the police was a requirement in 52% of cases, keeping away from a particular person in 43% of cases, with curfew being a requirement in 35%. Keeping away from a particular place was imposed in 26% of cases, with both surety and passport being a requirement in 2% of cases. Fifteen per cent had other conditions attached to bail.

Sixty participants in the remand process were interviewed during the study, the results of which also indicate the need for further research on the use of conditional bail. The findings of the questionnaires completed by the participants suggest that a substantial minority (42%) of participants felt the use of conditions to be excessive. Of the 22

Two believed that magistrates did not use conditions of bail as intended, four expressed doubts about the relevance of conditions to the grounds for refusing bail, six indicated that certain specific conditions did not attain their objective, five indicated that there are problems with the enforcement of conditions, and four gave other reasons for believing that conditions are used excessively by magistrates⁶. During the interviews these reasons were also highlighted as the main concerns with the use of conditions of bail and will be discussed in detail below.

Conditions of Bail are not Used as Intended

As already stated conditional bail should be imposed only if the presumption of unconditional bail has been rebutted. Conditional bail, then, is supposed to be an alternative to a remand in custody. However, of the 42 participants who expressed an opinion, 50% believed that conditional bail was generally used as an alternative to unconditional bail rather than custody. As a court clerk said:

Straight bail could be as effective as conditional bail in many cases. There may be an element of overkill by some magistrates. Maybe, conditions could be reserved for the most serious cases which are nevertheless still remanded on bail.

A solicitor forwarded similar sentiments:

Magistrates tend to use conditions for the sake of it. They do not always approach the Bail Act on the correct basis.

A more damning criticism of conditional bail came from another solicitor who said conditions were:

Often used as a preconviction punishment . . . Often used as a sop to police objections when unconditional bail is appropriate.

These comments suggest that conditions are being attached to bail in cases where unconditional bail would have sufficed. Block (1990) summed the situation up well when he argued that:

[Conditions] are all too often made by justices who want to grant bail but who do not wish to appear too soft, or do not want the defendant to think [s]he has got bail too easily, or who want to make some concession to a prosecution who has opposed bail, none of which motives are related to the reasons for withholding bail. (p. 84)

The Relevance of Conditions to the Grounds for Objecting to Bail

This criticism is based on the suggestions that magistrates tend to require defendants to abide by conditions that have little or no relevance to the grounds for objection to bail. An example of such a practice would be where a defendant is required to adhere to a curfew, the objective of which is to prevent further offending, when the ground for objecting to unconditional bail is that s/he will fail to appear. The situation when this

defendant receives if s/he is caught breaking conditions of bail. The majority of participants expressed the view that the punishment for breach of conditions is negligible, if not non-existent. This view is summed up by a police officer who said:

People [are] arrested on numerous occasions whilst being on bail conditions only to be given the same bail conditions by the court.

The punishment for breaches of conditions was seen as important as a deterrent both for the individual concerned and the wider population of defendants granted conditional bail. However, when asked what happens to these defendants who are caught breaking conditions, 68% replied that they were rebailed, usually with the same conditions. In summary, the majority of respondents believed that there was no deterrent against breaking conditions. Moreover, as a result defendants had 'a licence' to breach conditions as they were likely to be rebailed. A further consideration is that the police have a wide discretion whether or not to arrest a defendant for breach of conditions. There was some evidence from the study that defendants who were caught breaching conditions, particularly if it was not a serious breach, for example a defendant being out half an hour after their curfew, would simply be warned but not arrested. This was only the case if the breach did not involve further offending. The reason most often put forward for this practice was that, even if the defendants were arrested and returned to court, the court would only rebail them on the same conditions.

As a consequence the majority of those interviewed (78%) believed that a defendant who breached bail conditions should be remanded in custody either automatically (53%) or with consideration of the circumstances of the breach (25%). Furthermore, 70% believed that it should be a criminal offence to breach conditions (this would require a formal finding of guilt). The problem with both these suggestions is that the court has already decided that the case itself does not warrant a remand in custody, therefore, it is difficult to argue that a breach of a condition, whatever the severity or motive, without further alleged offending behaviour, should result in either a remand in custody or an additional sentence. This is particularly the case when a defendant remanded in custody for breach of conditions is likely to spend a substantial period of time in custody because of the difficulty of making a successful application for bail at a future date.

Concluding Comments

In conclusion, the research carried out in South Wales clearly highlights several problems with the operation of conditional bail. Disparities were found between courts, both in the proportional use of conditional bail and in the number of conditions attached to individual defendant's bail. This suggests that conditional bail is, at the very least, being used inconsistently, if not excessively, in some cases. This is certainly the view of many of the participants in the remand process who were interviewed. Additional

issues were raised by participants which highlight problems with the operation of the system of conditional bail. These need to be addressed if conditional bail is to operate effectively and attain its objectives. The results of one study, nevertheless, are not conclusive and further research is required to establish how the operational procedures and processes could be improved to allow conditional bail to better achieve its objectives. What these results do however suggest is that this area is a legitimate and important area of research.

Notes

- ¹ Remand prisoners accounted for 23% of the prison population in 1988/89 and 21% in 1989/90 (Home Office 1990).
- ² This is illustrated by the recent debate on offending while on bail or so called 'Bail Bandits' which has contributed to actual and proposed changes to the law on bail. For example, the Bail (Amendment) Act 1993 which gives the prosecution the right of appeal against magistrates' remand decisions in specified circumstances and the proposal to overturn the presumption of bail for those charged with certain offences again only in specific circumstances contained in the Criminal Justice and Public Order Bill 1993.
- ³ Electronic monitoring of defendants involves restricting a defendant's movements to a particular place or area by requiring the defendant to wear a transmitter around the wrist, ankle or neck. The transmitter gives off a signal which is transmitted down the telephone to a control room staffed around the clock. Checks can, therefore, be kept on the defendant's whereabouts, although there are different ways of accomplishing this. Moreover, the transmitter emits an audible sound to warn the defendant if s/he leaves the permitted area.
- ⁴ No official statistics are available on the use of conditional bail. The last time that conditional bail appeared in the Criminal Statistics was in 1979 when approximately a fifth of defendants had conditions imposed on their bail.
- ⁵ Both the disparity in the proportional use of conditional bail and the number of conditions attached may, of course, be accounted for by differences in the nature of the cases heard in the courts. Preliminary findings (the analysis of the data is at a relatively early stage) suggest that differences in the type of cases heard in the three courts cannot fully account for disparities in the use of conditional bail, therefore, it seems unlikely that the differences can be explained in this way.
- ⁶ The total number of reasons is greater than the number of participants who expressed an opinion because one participant gave two reasons and another three reasons why they believed conditions to be used excessively.

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